IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

In re:	Chapter 11
JACKSON HOSPITAL & CLINIC, INC., *et al.*,[1]	Case No. 25-30256
Debtors.	Jointly Administered

UMB BANK, N.A.'S EMERGENCY MOTION FOR A LIMITED STAY PENDING APPEAL OF THE FINAL ORDER AUTHORIZING POST-PETITION FINANCING

UMB Bank, N.A. ("**UMB**"), in its capacity as successor trustee under the Indentures,[2] and as noteholder representative and collateral agent under the 2024 Bridge Note Purchase Agreement, by and through its undersigned counsel, files this *Emergency Motion for a Limited Stay Pending Appeal of the Final Order Authorizing Post-Petition Financing and Granting Related Relief Pending Appeal* (the "**Motion**") for an order, substantially in the form attached hereto as **Exhibit A**, imposing a limited stay of the *Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Granting Related Relief* [D.I. 180] (the "**Final DIP Order**"), pending UMB's appeal of the Final DIP Order, and respectfully states as follows:

Preliminary Statement

1. The approval of priming liens for post-petition vendor and labor operating expenses in the Final DIP Order, without any evidence of the necessity of those liens or of the adequate protection of UMB's collateral, and without any limitations or controls on the amount of those

[1] The Debtors in these chapter 11 cases are Jackson Hospital & Clinic, Inc. and JHC Pharmacy, LLC.

[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Final DIP Order (as defined below).

expenses, was an unprecedent misapplication of Section 364(d). To preserve the value of UMB's collateral pending this appeal, UMB asks that the Court enter a limited stay of the Final DIP Order provisions concerning the carve outs for these vendor and labor operating expenses found in Paragraphs 24(b)(iii) and 24(g) of the Final DIP Order.

2. A stay is appropriate here because UMB is likely to succeed on appeal. The Court granted unnamed post-petition vendors and labor leave to extend Debtors an unspecified and uncapped amount of credit for post-petition operating expenses, with no supervision by the Court or impacted prepetition secured creditors, all secured by liens that prime UMB's prepetition collateral, which was already primed by the actual DIP Loans. While carve outs from DIP loans for professional and statutory fees to avoid administrative insolvency are common, carve outs for operating expenses – let alone without cap, a set or budgeted amount, or supervision – are unprecedented and not contemplated by Section 364(d).

3. Further, even if Section 364(d) could extend to operating expenses, Debtors and the Committee failed to present evidence to satisfy Section 364(d)'s requirements that the priming liens be the only option to obtain the needed credit, and that adequate protection be provided to the holders of the primed liens. They offered no evidence that vendors and labor would stop working for the Debtors without priming liens, even though they are being paid, or even who the purported creditors were. They may not even exist. The Debtors and Committee also presented no evidence that UMB was adequately protected by the liens granted in the Final DIP Order. Nor could they, as the amount of expenses with seniority under the challenged carve outs is unknown and uncapped. Given the novelty of this misuse of Section 364(d) and the lack of evidence to support its application here, the Final DIP Order is likely to be reversed on appeal.

4. A stay is also necessary to prevent irreparable harm to UMB. A limitless amount of UMB's collateral could be primed by vendors and labor pending appeal, and diverted away from UMB. Further, under Section 364(e), if these carve outs do arise under Section 364(d), it may be the case that those priming liens, once granted, cannot be undone even if the Final DIP Order is reversed on appeal. To prevent this potentially irreparable harm, the Court should enter a limited stay of the Final DIP Order, as contemplated by Section 364(e). By contrast, there is no harm to any other party from a stay, which would simply maintain the status quo, under which vendors and labor have continued to provide services to the Debtors and to be paid. And the public interest supports a stay to ensure the correct application of the law and assure that creditors can lend confidently to distressed entities knowing that their liens will not be subject to being primed by every unsecured post-petition operating expense.

5. Given UMB is likely to succeed on appeal and will suffer clear harm if a stay is not entered pending appeal, while the proponents of the carve outs are unlikely to suffer any harm from maintaining the status quo during the stay, a limited stay should be entered.

Jurisdiction and Venue

6. The relief requested herein is pursuant to Rule 8007 and Rule 9006(c) of the Federal Rules of Bankruptcy Procedures (the "**Bankruptcy Rules**") and Rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the Middle District of Alabama (the "**Local Rules**"). The United States Bankruptcy Court for the Middle District of Alabama (the "**Bankruptcy Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Statement of Facts

A. The Prepetition Debt

7. The Indentures were executed in 2015 in connection with the issuance of tax-exempt municipal bonds in the original principal amount of $84,195,000 (the "**Bonds**") and the related loan from ServisFirst in the original principal amount of $12,000,000 (the "**ServisFirst Loan**" and together with the Bonds, the "**Indenture Obligations**"). As of the Petition Date, no less than $72 million in principal amount of the Indenture Obligations was outstanding, exclusive of prepetition fees and interest. UMB is the Trustee under the Indentures.

8. In the months leading to the Petition Date, certain holders of the Bonds and ServisFirst provided the Hospital with more than $12 million in additional rescue financing, giving the Debtors the financial runway needed to prepare these Chapter 11 Cases. Specifically, in September 2024, ServisFirst provided a bridge loan in the original principal amount of $3.5 million (the "**Bridge Loan**"). In October 2024 and in January 2025, certain holders of the Bonds purchased bridge notes from the Hospital in the aggregate principal amount of $5 million and $3.6 million, respectively (the "**Bridge Notes**" and together with the Bridge Loan, the "**Bridge Financing**"). UMB is the noteholder representative and the collateral agent under the Bridge Notes.

9. The Indenture Obligations and the Bridge Financing (collectively, the "**Prepetition Debt**") are secured by the Prepetition Collateral, among other assets. The Prepetition Collateral includes a pledge of the Hospital's revenues, and liens on the Hospital's real estate assets, including its leasehold interest in the main hospital building.

B. The Bankruptcy Filing, DIP Loans, and First Day Hearing

10. On February 3, 2025 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for Chapter 11 relief in the Bankruptcy Court, commencing these Chapter 11 Cases. On the same day, the Debtors filed the motion for interim and final approval of $24.5 million in DIP Loans (the "**DIP Motion**") [D.I. 10].[3] The DIP Motion also sought approval of DIP Liens on assets that included the Prepetition Collateral, which would prime the liens granted to UMB and the Prepetition Debt lenders (collectively, the "**Prepetition Secured Parties**"). *See* DIP Motion ¶¶ 33-53. The Debtors argued that priming the Prepetition Secured Parties' liens was appropriate because the Debtors were "offering their Prepetition Secured [Parties] adequate protection in the form of replacement liens on all assets of the Debtors (subject and subordinate to the Carve Out, the DIP Liens, and the Permitted Prior Liens)." DIP Motion ¶ 51; Wilen Decl. ¶ 133. The Debtors asserted that the "DIP Facility provides the Debtors with the funding necessary to pay employees and vendors, and continue their hospitals' operations." Wilen Decl. ¶ 133; DIP Motion ¶ 51.

11. The DIP Motion also provided for a Carve Out provision, under which a certain portion of cash collateral would be reserved each week in a segregated account to pay for, among other things, certain statutory fees and certain professional fees allowed by the Bankruptcy Court, with all parties' rights to object to those professional fees reserved. *See* DIP Motion, Ex. A at ¶ 24. The Wilen Declaration stated that "the Carve Out protects against administrative insolvency during the pendency of the chapter 11 cases by ensuring that funds are available to pay U.S. Trustee's fees and professional fees of the Debtors and any statutory Committee." Wilen Decl. ¶ 136; DIP Motion

[3] In support of the DIP Motion, the Debtors offered the *Declaration of Allen Wilen in Support of Chapter 11 Petition and First Day Pleadings* (the "**Wilen Declaration**") [D.I. 9]. The Wilen Declaration was admitted into the record for solely for the purposes of the DIP Motion and the other first day relief. *See* Hr'g Tr. Feb. 5, 2025 at 39:8-14; Hr'g Tr. March 4, 2025 at 29:15-30:4.

¶ 54. The Carve Out provisions originally proposed for the payment of trustee or professional fees were either subject to Bankruptcy Court adjudication (and an opportunity for parties in interest to object) or were capped at a certain dollar amount. *See e.g.*, DIP Motion, Ex. A at ¶ 24(b)(ii)-(iv).[4]

12. Prior to the initial hearing on the DIP Motion, UMB filed the *Limited Objection and Reservation of Rights of UMB Bank, N.A. to the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [D.I. 43] (the "**Limited Objection**"), which noted that UMB was working with the Debtors and the DIP Lender to ensure the terms of the DIP Facility "adequately protect[s] their prepetition security interests as required under the Bankruptcy Code." Limited Obj. ¶ 5.

13. On February 5, 2025, the initial hearing was held in these Chapter 11 Cases for approval of the DIP Facility.[5] At that hearing, counsel for UMB stated that modifications to the proposed interim order had been negotiated with the Debtors and the DIP Lender, including additional adequate protection in the form of superpriority administrative expense claims to the extent of any diminution in value of the Prepetition Collateral. *See* Hr'g Tr. Feb. 5, 2025 at 49:18-22. Following the February 5 hearing, the Bankruptcy Court entered the order approving the DIP Facility on an interim basis [D.I. 69] (the "**Interim DIP Order**"), reflecting the modifications UMB had negotiated with the DIP Lender and the Debtors noted on the record at the February 5

[4] Specifically, the proposed Carve Out caps an appointed chapter 7 trustee fees at $50,000, requires any pre-DIP default professional fees to be allowed by the Bankruptcy Code, and caps any post-DIP default professional fees at $2.5 million.

[5] The Wilen Declaration was admitted into the record on February 5 for the limited purpose of the various first day motions, including the DIP Motion. *See* Hr'g Tr. Feb. 5, 2025 at 16:8-9.

hearing. The Interim DIP Order provided the Prepetition Secured Parties adequate protection in the form of replacement post-petition liens on all DIP Collateral (the "**Adequate Protection Liens**") and superpriority administrative expense claims (the "**Adequate Protection Superpriority Claims**" and collectively with the Adequate Protection Liens, the "**Adequate Protection**"), which would be subject to the DIP Lender's claims and liens and the Carve Out. Interim DIP Order ¶ 13(a). By virtue of the Adequate Protection Liens on DIP Collateral, the Prepetition Secured Parties were granted new liens on all the Debtors' assets, including the Hospital's personal property.

C. The Committee's Objection and Proposed Modifications

14. Following entry of the Interim DIP Order, negotiations continued between UMB, the Debtors, and the DIP Lenders regarding the form of proposed final order. On February 27, 2025, UMB filed a supplement to its Limited Objection [D.I. 151] (the "**Supplemental Limited Objection**"), noting that UMB had provided minor comments to the proposed final DIP order and further reserving its rights to the extent any other changes impacting UMB or the Prepetition Secured Parties were made to the order prior to the hearing on March 4, 2025.

15. The Committee also filed an objection to the DIP Motion [D.I. 146] (the "**UCC DIP Objection**") on February 27, 2025. The Committee proposed a modification to the final order to add to the Carve Out a new provision for so-called "Trailing Expenses," which was defined as post-petition expenses that were either "incorporated into the Approved Budget but not paid" or that had "accrued during any budget period, but were not payable during any budget periods." *See* UCC DIP Obj., Ex. A at ¶ 24(b). The Committee claimed that without the Carve Out provision for Trailing Expenses, post-petition vendors would be "be forced to bear the risk of non-payment of accrued obligations provided for in the DIP Budget due to the Debtors' administrative insolvency

or the occurrence of an Event of Default." UCC DIP Obj. ¶ 31. The Committee argued that the Trailing Expense Carve Out was necessary "to ensure the estates remain administratively solvent." *Id*. at ¶ 2(ii).

16. By including the Trailing Expenses in the Carve Out, these expenses would be given priority in payment over the Prepetition Secured Parties' claims and liens. The Committee provided no other explanation or evidence for its position on the Trailing Expenses, including providing no evidence that the Trailing Expense Carve Out satisfied the requirements of Section 364(d) of the Bankruptcy Code.[6] Namely, the Committee made no showing that the unidentified post-petition vendors were providing credit to the Debtors or the amount of that credit, that the Debtors could not obtain these services without providing those unidentified vendors a senior or equal lien, or that Prepetition Secured Parties were adequately protected. Further, unlike the original DIP Motion's Carve Out provision with respect to professional fees, the Committee's proposed Carve Out for Trailing Expenses were neither subject to the Bankruptcy Court's allowance process or paid from the DIP Facility funds purposefully segregated to pay the Carve Out.

D. The Final DIP Hearing and UMB's Appeal

17. On March 4, 2025, few hours before the final hearing on approval of the DIP Facility, UMB's counsel received a further revised draft of the proposed final order. This draft of the order removed the Committee's proposed Trailing Expenses from the Carve Out provision, but adds that "the post-petition expenses incurred in the ordinary course of the Debtors' operations prior to the Trigger Date (defined below) to the extent such amounts were categorized in the AP

[6] Notably, the Committee did not object to any of the other first day relief, including the critical vendor motion, wages motion, and taxes motion.

Spending line of the Approved Budget but not paid prior to the Trigger Date, in an amount not to exceed $1,700,000" will be included in the definition of Carve Out (the "**Senior Carve Out Provision**"). In addition, the revised draft order creates a new "Junior Carve Out" that generally encompasses the same category of post-petition operational expenses, and read in its entirety as follows:

> **Junior Carve Out**. The term "Junior Carve Out" shall mean the sum of (i) the post-petition expenses incurred in the ordinary course of the Debtors' operations prior to the Trigger Date (defined below) but not paid prior to the Trigger Date, and not paid from the Carve Out, and (ii) the post-petition salaries, wages and payroll taxes incurred in the ordinary course of the Debtors' operations prior to the Trigger Date but not paid prior to the Trigger Date. The DIP Liens, the DIP Superpriority Claims and the indefeasible repayment in full in cash of all DIP Obligations shall be senior to the Junior Carve Out. The Adequate Protection Liens and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Junior Carve Out.

18. The Senior Carve Out Provision and the Junior Carve Out (collectively, the "**Challenged Carve Outs**") effectively subordinate the Prepetition Secured Parties' claims and liens to that of potentially unlimited post-petition operational expense claimants. While it appears that the DIP Lender was willing to subordinate its claims and liens to the Senior Carve Out Provision, capped at $1.7 million, no such cap exists for the Junior Carve Out. In essence, these Challenged Carve Out provisions are entirely unprecedented in that they permit an unlimited amount of post-petition operational expenses to prime the liens and claims granted as Adequate Protection to the Prepetition Secured Parties on a non-consensual basis.

19. The hearing on final approval of the DIP Facility was held on March 4, 2025.[7] At that hearing, counsel for the Committee indicated that the purpose of the Challenged Carve Outs was to pay for administrative expenses, such as post-petition vendor and employee claims, in the event the Debtors are administratively insolvent, [*see* Hr'g Tr. March 4, 2025 at 46:12-47:6] because "post-petition payables should be sacrosanct." Hr'g Tr. March 4, 2025 at 49:1. No evidence was ever offered with respect to the Challenged Carve Outs, the proposed superpriority administrative expense claim status of the expenses that qualify under these provisions, or their impact on the Prepetition Secured Parties. At the conclusion of arguments, this Court ruled that the Challenged Carve Outs would be approved because "[t]hat's the DIP lender's money, and they have chosen to ensure that there's funding sufficient to maintain operations" and that it was appropriate for the DIP Lender "to be able to dictate that those administrative expenses are guaranteed payment." Hr'g Tr. March 4, 2025 at 67:20-25. To be clear, it's not the DIP Lender's money, as the Junior Carve Outs in particular create new liens after the DIP Lenders but before the Prepetition Secured Parties, and extend beyond the scope of the liens granted to the DIP Lenders.

20. On March 6, 2025, the Bankruptcy Court entered the order approving the DIP Facility on a final basis [D.I. 180] (the "**Final DIP Order**"). The Final DIP Order includes the $1.7 million capped Senior Carve Out Provision from the March 4 draft order. Final DIP Order ¶ 24(b)(iii). In addition, the Junior Carve Out from the March 4 draft order was only slightly modified in that the last sentence now reads: "The ***Prepetition Liens***, the Adequate Protection Liens and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the ***Carve Out and the Junior Carve Out***." Final DIP Order ¶ 24(g). The Final DIP

[7] Counsel for the Committee stated at the hearing that a further revised draft of the proposed order had been submitted to the Court but had not been shared with counsel to UMB. *See* Hr'g Tr. March 4, 2025 at 45:14-17.

Order does not purport to adequately protect the Prepetition Secured Parties against the diminution caused by the Challenged Carve Out expenses being senior to their claims and expenses. Unlike the Trailing Expense Carve Out originally proposed by the Committee, which had to be either included in an Approved Budget or "reasonable and necessary" [*see* UCC DIP Obj. Ex. A, ¶ 24(b)], the Final DIP Order's Junior Carve Out does not include even those minimal restrictions. Contrary to counsel to the Committee's statements at the March 4 hearing, there is no requirement in the Final DIP Order that the Junior Carve Out expenses be subject to the Bankruptcy Court's jurisdiction,[8] nor is there any other mechanism to potentially check these amounts. And, while the Final DIP Order preserves the DIP Lender's ability to object to the expenses incurred in connection with the Senior Carve Out Provision, the Prepetition Secured Parties' right to object to Bankruptcy Court allowance is not preserved.

21. On March 19, 2025, UMB timely filed the notice of appeal [D.I. 248] (the "**Notice of Appeal**"). In connection with its appeal, UMB files this Motion for a limited stay of the Final DIP Order's, solely with respect to the Challenged Carve Outs, pending UMB's appeal. As noted in the Notice of Appeal, UMB asserts that the each of the Challenged Carve Outs amounts to post-petition credit for operational expenses that primes the Prepetition Secured Parties in violation of the Bankruptcy Code, and should not have been approved absent a showing that the Prepetition Secured Parties are sufficiently adequately protected.

Argument

22. UMB requests a limited stay of the Challenged Carve Out provisions in the Final DIP Order pending the appeal. This request easily satisfies the requirements for a stay pending

[8] *See, e.g.*, Hr'g Tr. March 4, 2025 at 48:8-15 ("There's a check and balance to that [Junior Carve Out], Your Honor. It's not an unlimited amount … it's got to meet the 503(b) standard. … [I]t is limited to administrative expenses as narrowly defined in 503(b), subject to Your Honor's jurisdiction.").

appeal under Bankruptcy Rule 8007. *See, e.g.*, *Woide v. Fannie Mae (In re Woide)*, 730 F. App'x 731, 737 (11th Cir. 2018) (listing factors). *First*, UMB is likely to succeed because the Challenged Carve Outs are an unprecedented expansion of Section 364(d) of the Bankruptcy Code to benefit post-petition vendors and labor, and because neither the Debtors nor the Committee provided evidence demonstrating that they satisfied the requirements under Section 364(d). *Second*, UMB will suffer irreparable injury from the Challenged Carve Outs because UMB's collateral will be redirected to vendors and labor without compensation, supervision, or adequate protection, and perhaps irreversibly as a result of Section 364(e). *Third*, a stay of the Challenged Carve Outs will not injure any other parties as it will simply maintain the status quo, under which vendors and labor are already providing services and getting paid. *Fourth*, the public interest favors a stay to ensure the correct application of the law and to ensure that lenders remain willing to offer credit on a secured basis to high-risk borrowers, confident that their security will not be primed by every-day, unsecured vendors and labor. Further, UMB should not be required to post a bond as maintenance of the status quo poses no risk to the bankruptcy process or any other parties.

A. UMB's Likelihood of Success Factor Warrants Granting the Limited Stay

23. UMB has a substantial likelihood of success on appeal because the Challenged Carve Outs are an improper and unprecedented exercise of Section 364(d) to prime Prepetition Secured Parties for the benefit of post-petition operating expense claimants, an error exasperated by the failure of the Debtors or the Committee to present any evidence that the Challenged Carve Outs were necessary for the Debtors to obtain the goods or services from those post-petition vendors and labor or that the Prepetition Secured Parties were adequately protected.

24. *First*, the Challenged Carve Outs constitute an unprecedented and improper exercise of Section 364(d). Section 364(d) is intended as a highly controlled, last-resort source of

financing for a debtor during the bankruptcy to preserve the value of the estate, when other sources of financing operating expenses are unavailable. *See e.g., In re Au Natural Restaurant, Inc.*, 63 B.R. 575, 581 (Bankr. S.D.N.Y. 1986) ("[T]he Code requires a showing that the debtor is unable to obtain credit by some other, less drastic, means."). It contemplates a debtor obtaining a specific, fixed amount of financing for the duration of the bankruptcy, typically in the form of cash that can be used to pay operating expenses. *See, e.g.*, *Shapiro v. Saybrook Mfg. Co., (In re Saybrook)*, 963 F.2d 1490, 1495 (11th Cir. 1992) ("Section 364 authorizes Chapter 11 debtors to obtain secured credit and incur secured debt as part of their reorganization"). That's not what has happened here. The Challenged Carve Outs are not a fixed amount of cash financing provided to pay operating expenses under the supervision of the Court or DIP Lender. They are an open checkbook for otherwise unsecured post-petition vendors and labor at the expense of Prepetition Secured Parties.

25. The lack of control or monitoring here is particularly problematic. The Final DIP Order imposes no restrictions, whatsoever, on the amount or type of post-petition operational expenses that can take advantage of the Challenged Carve Out provisions. Notably, the DIP Lender's right to object to the expenses incurred under the Senior Carve Out Provision is preserved, but no corresponding right to object is given to the Prepetition Secured Parties. And, unlike the Carve Out provisions for professional and statutory fees, which UMB has not appealed and are generally paid directly from the DIP Facility proceeds and/or included in a budget, there is no budget and no express cap on the expenses that participate in the Junior Carve Out with priority over the Prepetition Secured Parties. These Challenged Carve Out expenses can be incurred and priming liens placed without any review by the Bankruptcy Court. The Debtors may interpret this to grant them carte blanche to purchase items on credit from vendors, for example,

assuring them that, not to worry, they have first dibs on the Debtors' collateral after the DIP Lenders, to the detriment of the Prepetition Secured Parties.

26. No party supporting these Challenged Carve Outs cited to the Court any examples – not one – of a similar approval of Section 364(d) to allow an uncapped and unsupervised amount of operating expenses owed to vendors and labor to prime prepetition secured creditors over those prepetition secured creditors' objections. The Committee invented this novel and impermissible application of Section 364(d) out of whole cloth, and it is unlikely to survive review by the District Court.[9]

27. *Second*, the Challenged Carve Out provisions do not satisfy Section 364(d)(1)(A) because there is no evidence that the Debtors were "unable to obtain such credit otherwise," i.e., without priming the Prepetition Secured Parties. Neither the Committee nor the Debtors introduced any evidence that *any* vendors or employees would be unwilling to continue to extend necessary credit to the Debtors absent priming the Prepetition Secured Parties, let alone that all of them, or even most or a large number of them, would refuse to deal with the Debtors absent the priming liens granted in the Final DIP Order. That lack of evidence of necessity, by itself, is sufficient grounds for reversal. *See e.g., In re Au Natural Restaurant, Inc.*, 63 B.R. 575, 581

[9] In response to a request by UMB, the Committee provided precedent for the proposed Trailing Expense Carve Out, none of which it presented to the Court and all of which are readily distinguishable. In the final post-petition financing order in *In re Proton Therapy Center, LLC*, Case No. 20-bk-05438 (RSM), D.I. 1107, ¶ 27 (Bankr. M.D. Tenn. April 26, 2022), the prepetition bond trustee was the DIP lender, and the order was entered consensually (*e.g.*, the prepetition secured bondholders did not object). Moreover, the carve out only applied to trailing expenses that were budgeted. *Id*. ¶ 27(c). The interim post-petition financing order in *In re LRGHealthcare*, Case No. 20-10892 (MAF), D.I. 506, ¶ 13 (Bankr. D.N.H. Feb. 19, 2021) provided for the payment of post-petition operating expenses that were included in a budget and granted the prepetition secured lenders the ability to object. In *In re Curae Health, Inc.*, Case No. 18-05665, D.I. 455, ¶ 8(a) (Bankr. M.D. Tenn. Nov. 11, 2018), the DIP lender was a prepetition secured lender, the operational expense carve out was limited to budgeted amounts, and the other prepetition secured lenders (not lending under the DIP) either consented to the priming of their liens and/or agreed that they were adequately protected. *Id*. ¶ F(iii). The non-DIP prepetition secured lenders were also "also granted non-exclusive standing to object to any administrative or priority expense claims" and preserved their rights to "seek new or different adequate protection" at a later date. *Id*. ¶ H.

(Bankr. S.D.N.Y. 1986) (noting that under section 364(d)(1) "the Code requires a showing that the debtor is unable to obtain credit by some other, less drastic, means"); *In re T.M. Sweeney & Sons LTL Servs., Inc.*, 131 B.R. 984, 989 (Bankr. N.D. Ill. 1991) ("where a trustee or debtor in possession cannot otherwise obtain unsecured post-petition credit, such credit may be obtained under certain carefully proscribed conditions").

28. Moreover, it is highly likely that on remand from the district court, the Committee and Debtors will be unsuccessful in meeting Section 364(d)(A)(1) because the reality is that vendors and employees have in fact continued to provide supplies and labor to the Debtors since the Petition Date, and there is no reason to think they would suddenly refuse to do so if they could not receive priming liens. So long as they continue to be paid as an ordinary course expense – as they have been – they presumably will continue to extend credit to the Debtors. Indeed, the Debtors' own "Vendor Frequently Asked Questions" sheet states that the "Debtors have obtained debtor-in-possession financing that will allow us to continue operations and pay suppliers and vendors for goods and services provided on or after the filing date."[10]

29. *Third*, the Challenged Carve Out provisions do not satisfy Section 364(d)(1)(B) because there is no evidence that the Prepetition Secured Parties have been provided sufficient adequate protection. Under Section 364(d)(2), Debtors "ha[ve] the burden of proof on the issue of adequate protection," and neither Debtors, nor the Committee, introduced *any* evidence to meet that burden. They introduced no evidence that the Prepetition Secured Parties would receive any new liens or other compensation to offset the diminishment of their collateral by these Challenged Carve Outs. That failure alone is sufficient grounds to reverse the Final DIP Order with respect to

[10] The "Vendor Frequently Asked Questions" sheet is available on the Debtors' claims and noticing agent website and can be accessed here: https://casedocs.omniagentsolutions.com/cmsvol2/pub_47537/348d2684-c026-4963-b397-3ddd26dc6ebd_Vendor%20FAQs.pdf.

the Challenged Carve Out provisions. *In re First South Savings Assoc.*, 820 F.2d 700, 712 (5th Cir. 1987) (finding that post-petition financing should be rejected where it is based on assumptions not supported by the record); *In re St. Petersburg Hotel Assocs. Ltd.*, 44 B.R. 944, 946 (Bankr. M.D. Fla. 1984) (denying super priority post-petition financing where the debtor presented speculative and unrealistic evidence of adequate protection of prepetition mortgagee); *In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 753 (S.D. Fla. 2010) (finding that bankruptcy court erred in finding that statutory lienholders were adequately protected where the debtor presented no evidence of adequate protection); *In re T.M. Sweeney & Sons LTL Servs., Inc.*, 131 B.R. at 990 (concluding that a lien with superpriority or priming position over prepetition liens was not authorized under the Bankruptcy Code without evidence that the prepetition liens were adequately protected).

30. Moreover, the Challenged Carve Out provisions by design deprive the Prepetition Secured Parties of adequate protection by spending their cash collateral without any corresponding compensation or protection. The purpose of adequate protection is to "insure that the creditor receives the value for which [they] bargained prebankruptcy." *In re Swedeland Dev. Grp. Inc.*, 16 F.3d 552, 564 (3d Cir. 1994). In other words, courts are required to "compensate a secured for any decrease in the value of its interest caused by the grant of priming lien or the use of collateral." *In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. at 752. Typically, a "carve-out is essentially an agreement by the secured creditor to subordinate its liens and claims to certain allowed administrative expenses, permitting such [administrative expenses] to come first in terms of payment from the estate's assets." *In re Molycorp, Inc.*, 562 B.R. 67, 76 (Bankr. D. Del. 2017); *see also In re ACI Concrete Placement of Kansas, LLC*, 604 B.R. 400, 403 (Bankr. D. Kan. 2019) ("carve-outs are recognized as a means for allowing secured creditors to waive their liens and

super-priority claims to allow the payments of certain administrative expenses, but not others"). Because the Prepetition Secured Parties have not agreed to waive their liens and claims to allow for the payment of the Challenged Carve Out expenses, and each dollar of cash collateral spent on those expenses directly reduces their collateral, the Debtors and the Committee must establish through evidence that the Prepetition Secured Parties are adequately protected. No evidence was offered by the Debtors, the DIP Lender, or the Committee on the sufficiency of the adequate protection, the value of any collateral, the projected claims paid under these Challenged Carve Out provisions, or anything else. As such, the burden to establish adequate protection has not been satisfied. For all these reasons, UMB is likely to prevail on appeal, and that weighs in favor of a limited stay of the Challenged Carve Outs.

B. The Irreparable Injury Factor Warrants Granting the Limited Stay

31. A secured creditor will be irreparably harmed if it is not adequately protected against the depreciation of its collateral during the pendency of an appeal. *See, e.g., In re Davis*, Case No. 11-43159-JJR, 2012 Bankr. LEXIS 2581, at *23-24 (Bankr. N.D. Ala. June 7, 2012) (concluding that the depreciation in collateral pending an appeal constitutes irreparable harm to the secured creditor absent sufficient adequate protection); *see also In re Pine Lake Vill. Apartment Co.*, 21 B.R. 395, 397 (S.D.N.Y. 1982) ("Unquestionably, a secured creditor has the right to be protected against any decline in value that the collateral could suffer if an automatic stay was in effect since, absent the stay, the creditor would foreclose, preventing any further loss in the value of the security."). Thus, UMB will face irreparable injury if the stay is not granted.

32. The Challenged Carve Out provisions allow the Debtors to incur post-petition expenses that will come ahead of the adequate protection UMB negotiated for, and which do not need to be included on a budget or in any reporting to the Prepetition Secured Parties, or to be

approved by this Bankruptcy Court. In essence, the Final DIP Order allows the surcharge of the Prepetition Secured Parties' collateral without any of the protections otherwise provided by the Bankruptcy Code. There is no way for UMB to safeguard against the accrual of these uncapped expenses, all of which must be paid before a dollar of recovery goes to UMB for adequate protection.

33. A stay is particularly called for here because it is not necessarily the case that any liens granted to vendors or others for operating expenses as a result of the Challenged Carve Outs can simply be removed if UMB prevails on appeal. It at least appears that the Challenged Carve Outs intend to grant new priming liens pursuant to Section 364(d), as if the vendors and labor benefiting from those carve outs are additional DIP lenders. If true, Section 364(e) of the Bankruptcy Code could potentially protect any liens extended pending appeal from review and reversal in the event the Challenged Carve Out provisions are later determined to be improper. Section 364(e) further contemplates that a stay pending appeal will be necessary to prevent prepetition lenders being primed pending the appeal. Therefore, on order to ensure a full adjudication of the Challenged Carve Outs and to protect UMB's collateral from improper and potentially irreversible diminution, a stay is necessary.

C. The Lack of Substantial Injury to Others Factor Warrants Granting the Limited Stay

34. A stay of the Challenged Carve Out provisions will not injure anyone at all. By staying the application of those discrete provisions, post-petition vendors and employees will still have all protections afforded to them as post-petition claimants under the Bankruptcy Code and the other final orders in this case (e.g., final critical vendor and wages orders) during the pendency of the appeal process. The limited stay of the Challenged Carve Out provisions is essentially a return to the Interim DIP Order's status quo.

D. The Public Interest Factor Warrants Granting the Limited Stay

35. The public interest will be served here by granting the requested limited stay pending appeal to preserve the status quo without impeding the Debtors' reorganization efforts while the parties litigate the propriety of the Carve Out Provisions. First, the public has an interest in the proper application of the law. *See Session v. Am. Honda Fin. Corp. (In re Session)*, 622 B.R. 102, 108 (Bankr. S.D. Ala. 2020) ("The public interest is best served when the integrity of the court system is maintained by consistent application of the law in a prompt and judicious manner"). The public interest will be served here by ensuring the proper application of the Final DIP Order in these Chapter 11 Cases. Second, the public interest is served by maintaining the status quo pending full adjudication of the merits. *See Skinner v. SBA (In re Skinner)*, 202 B.R. 867, 869 (W.D. Va. 1996) (*citing Feller v. Brock*, 802 F.2d 722, 727 (4th Cir. 1986)).

36. Because the Motion seeks only a limited stay of the Carve Out Provisions, the Debtors will be able to obtain the post-petition financing and operate in the ordinary course and continue their reorganization efforts while the parties litigate the propriety of the Challenged Carve Out provisions. The public interest favors a stay to ensure the protections afforded by the Bankruptcy Code to the various stakeholders will be honored. The Bankruptcy Code requires that prepetition secured lenders primed by a post-petition financing lender will be adequately protected and that post-petition suppliers, vendors, and employees, are prioritized as administrative expense claims. To permit a deviation from these principles, without evidence, is contrary to the public interest, and could in fact discourage lenders from lending to distressed entities out of concern that they will be primed not only by a DIP lender, but also by post-petition vendors and labor.

E. UMB Should Not Be Required to Post a Bond

37. Bankruptcy Rule 8007 provides the Bankruptcy Court with discretion with regard to whether a bond must be posted by an appellant. *Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 782 (10th Cir. 1964). "The reason for requiring a bond is to secure the prevailing party against any loss that might be sustained as a result of an ineffectual appeal." *In re Sphere Holding Corp.*, 162 B.R. 639, 644 (E.D.N.Y. 1994) (concluding that a stay was not necessary "because little or no damage will be incurred as a result of the stay."). Therefore, because this Motion seeks an appeal of the Carve Out Provisions of the Final DIP Order, which is not a money judgment, UMB should not be required to post a bond as a condition to the granting of the limited stay pending appeal.

Conclusion

38. Because UMB is likely to prevail on appeal and will likely suffer irreparable harm absent a stay, and because neither the other parties nor the public interest will be harmed by a stay, this Court should enter a limited stay of the Challenged Carve Outs for vendor and labor operating expenses found in Paragraphs 24(b)(iii) and 24(g) of the Final DIP Order.

39. Pursuant to Bankruptcy Rule 9006(c) and Local Rule 9013-1, UMB asserts there is cause for the Court to reduce the notice period for this Motion to prevent further irreparable harm. As such, UMB respectfully requests this Court set the Motion for an emergency hearing on April 1, 2025 and require objections be filed no later than March 27, 2025 at 4 pm (CT).

[*Remainder of Page Intentionally Left Blank*]

Dated: March 20, 2025

Respectfully Submitted,

/s/ Justin G. Williams

Justin G. Williams

TANNER & GUIN LLC
2711 University Blvd. Suite 201
Tuscaloosa, Alabama 35403-3206
Phone: (205) 633-0218
Fax: (205) 633-0318
Email: justin@tannerguin.law

-and-

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Amy Caton (admitted *pro hac vice*)
Douglas Buckley (admitted *pro hac vice*)
1177 Avenue of the Americas
New York, New York 10036
Phone: (212) 715-9100
Fax: (212) 715-8000
Email: acaton@kramerlevin.com
dbuckley@kramerlevin.com

Ralph C. Mayrell (*pro hac vice* forthcoming)
2000 K Street NW, 4th Floor
Washington, DC 20006
Phone: (202) 775-4500
Fax: (202) 775-4510
Email: rmayrell@kramerlevin.com

Counsel to UMB Bank, N.A.

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

In re:	Chapter 11
JACKSON HOSPITAL & CLINIC, INC., *et al.*,[1]	Case No. 25-30256
Debtors.	Jointly Administered

ORDER GRANTING UMB BANK, N.A.'S
MOTION FOR A LIMITED STAY PENDING APPEAL OF THE
FINAL ORDER AUTHORIZING POST-PETITION FINANCING

Before the Court is the following motion (the "**Motion**")[2] of UMB Bank, N.A. ("**UMB**") for an order (this "**Order**") imposing a limited stay of the *Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Granting Related Relief* [D.I. 180] (the "**Final DIP Order**"), as more fully set forth in the Motion; A hearing on the Motion was held by the Court on April__, 2025 (the "Hearing"). The Court having considered the record in this case, including the Motion, any objections filed in response to the Motion, and the

[1] The Debtors in these chapter 11 cases are Jackson Hospital & Clinic, Inc. and JHC Pharmacy, LLC.

[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

statements of those parties present at the Hearing; and it appearing to the Court that (a) it has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. §157(b); (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (d) sufficient notice has been provided under the circumstances; and (e) good and sufficient cause exists for the relief granted herein; now therefore**:**

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is granted pursuant to the terms of this Order.

2. The provisions for the Challenged Carve Outs found in Paragraphs 24(b)(iii) and 24(g) of the Final DIP Order and any enforcement thereof are stayed pending the exhaustion of the appellate process.

3. All other provisions in the Final DIP Order shall remain in full effect without consideration of any reference to or incorporation of the Challenge Carve Outs. Nothing herein or in the Motion is intended to, shall constitute, or shall be deemed to constitute a stay of any other term or provision in the Final DIP Order.

4. This Order shall be effective and enforceable immediately upon entry.

5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement, or interpretation of this Order.

###END OF ORDER###

Order drafted and submitted by:
Justin G. Williams
TANNER & GUIN LLC
2711 University Blvd. Suite 201
Tuscaloosa, Alabama 35403-3206
Phone: (205) 633-0218
Fax: (205) 633-0318
Email: justin@tannerguin.law

-and-

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Amy Caton (admitted *pro hac vice*)
Douglas Buckley (admitted *pro hac vice*)
1177 Avenue of the Americas
New York, New York 10036
Phone: (212) 715-9100
Fax: (212) 715-8000
Email:acaton@kramerlevin.com
dbuckley@kramerlevin.com

Ralph C. Mayrell (*pro hac vice* forthcoming)
2000 K Street NW, 4th Floor
Washington, DC 20006
Phone: (202) 775-4500
Fax: (202) 775-4510
Email:rmayrell@kramerlevin.com

Counsel to UMB Bank, N.A.