

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

|                       |   |                        |
|-----------------------|---|------------------------|
| In re:                | : | Case No. 25-30191      |
| The Bellevue Hospital | : | Chapter 11             |
|                       | : |                        |
| Debtor.               | : | Judge Mary Ann Whipple |

**MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE TERMS OF A KEY  
EMPLOYEE INCENTIVE PLAN, (II) AUTHORIZING PAYMENTS TO  
KEY EMPLOYEES IN ACCORDANCE THEREWITH,  
AND (III) GRANTING RELATED RELIEF**

The Bellevue Hospital, debtor and debtor in possession (the “Debtor”), moves the Court for the entry of an order, pursuant to 11 U.S.C. §§ 105(a), 363(b) and (c), and 503(b) and (c), approving the terms of a key employee incentive plan and authorizing payments to key employees in accordance therewith.

A memorandum in support follows, and a proposed order is attached as Exhibit A (the “Proposed Order”).

Respectfully submitted,

/s/ Richard K. Stovall

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## **MEMORANDUM IN SUPPORT**

### **I. JURISDICTION & BACKGROUND INFORMATION**

1. This Court has jurisdiction over this application under 28 U.S.C. §§ 157 and 1334 and the General Order of Reference entered in this district.

2. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding as defined in 28 U.S.C. § 157(b)(2).

3. On February 5, 2025 (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate and manage its business as debtor in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

4. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this chapter 11 case, is set forth in detail in the Declaration of Sara K. Brokaw (the “Brokaw Declaration”) (Doc. 35) and the Declaration of Darrell M. Lentz (the “Lentz Declaration” and, along with the Brokaw Declaration, the “First Day Declarations”) (Doc. 36). The First Day Declarations are incorporated herein by reference.

### **II. THE KEY EMPLOYEES & THE INCENTIVE PLAN**

5. The Debtor requests that this Court authorize payments to certain key employees (the “Key Employees”), specifically (i) Sara Brokaw, its President and CEO, and (ii) Chastity Batista, its Senior Nursing Director.

6. Sara Brokaw is the Debtor’s President and Chief Executive Officer, and is also a member on the Debtor’s Board of Trustees. *See* Brokaw Declaration, ¶ 1. Prior to serving in this role, Ms. Brokaw acted as the Chief Operating Officer and Chief Nursing Officer, and has worked in the medical field and hospital environments since 2005. *Id.* Through this vast experience in the

industry—particularly her experience as a leader in the Debtor’s organization—Ms. Brokaw has become familiar with all aspects of the Debtor’s operations and financial affairs. *Id.* Accordingly, Ms. Brokaw was critical in preparing the Debtor for this chapter 11 proceeding, and will continue to be critical as the Debtor proceeds through the bankruptcy process before this Court.

7. Chastity Baptista currently serves as Senior Nursing Director for the Debtor. In this position, Ms. Baptista serves a supervisory role as a leader among various nurses and other staff. This position is critical to the Debtor’s administration, chain of command, and internal oversight, because a supervisor engaging daily with the Debtor’s nurses and staff ensures that those professionals’ issues are being addressed and that they continue to provide top-notch health care to the Debtor’s patients. In this position as Senior Nursing Director, Ms. Baptista’s retention is critical to the Debtor’s operations as it proceeds through this chapter 11 case.

8. Due to the importance of the Key Employees’ efforts to maximize the value of the Debtor’s business as a going-concern, the Debtor’s Interim Chief Financial Officer—Darrell M. Lentz<sup>1</sup>—developed the Incentive Plan described in this motion. Recognizing the importance of the Key Employees, The Bank of New York Mellon Trust Company, N.A., in its capacity as Master Trustee (the “Master Trustee”) for the benefit of Fifth Third Bank, N.A. (“Fifth Third” and, together with the Master Trustee, the “Senior Secured Creditor”), and Firelands Regional Health System, in its capacity as post-petition lender (the “DIP Lender”), have both approved the amounts set forth in the Incentive Plan as reasonable, as such amounts are reflected in the Debtor’s cash budget<sup>2</sup>, subject to the approval of this Court.

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<sup>1</sup> See the Lentz Declaration at ¶ 2; see also the *Application to Retain and Compensate HL4 Consulting, LLC, to Provide Services of Darrell M. Lentz as Interim Chief Financial Officer* filed on the Petition Date (Doc. 20).

<sup>2</sup> See the *Motion for an Order (I) Authorizing the Debtor to (A) Obtain Post-Petition Financing from Firelands, (B) Use Cash Collateral, (C) Provide Adequate Assurance Protection to Senior Secured Creditor; and, (II) Granting Related Relief* filed on the Petition Date (the “Cash Collateral Motion”) (Doc. 34), and the *Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Secured Financing; (II) Authorizing the Debtor’s Use of Cash*

9. Generally, the proposed Incentive Plan intends to incentivize the Key Employees through performance payments if certain metrics (the “Metrics”) are met in this chapter 11 proceeding. The Metrics are as follows:

- a. the Debtor’s reorganization plan is accepted and successfully confirmed by the Court, and the Debtor closes on any Transaction<sup>3</sup> contemplated thereby;
- b. until and through the successful closing of a Transaction, the Debtor maintains gross revenue charges on a monthly basis that are at or above 80% of the average monthly charges for 2024<sup>4</sup>; and
- c. until and through the successful closing of a Transaction, the Debtor’s organizational turnover rate (for unwanted turnover) remains at or below 25%.

10. Should the Debtor meet all of its Metrics, then the Key Employees would be paid the following (the “Performance Payments”): \$80,000 to Ms. Brokaw, which is equivalent to 20% of her yearly salary; and \$25,000 to Ms. Batista, which is equivalent to approximately 17% of her yearly salary. In total, the Performance Payments add up to \$105,000.

11. If the Metrics are met, then Performance Payments shall be paid to Ms. Brokaw and Ms. Batista within thirty (30) days following the Debtor’s successful closing of a Transaction.

### **III. RELIEF REQUESTED**

12. By this motion, the Debtor respectfully requests the entry of an order, substantially similar to the Proposed Order attached as Exhibit A, approving the Incentive Plan, authorizing the Performance Payments to the Key Employees in accordance therewith, and granting related relief.

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*Collateral; (III) Granting Adequate Protection to the Prepetition Secured Parties; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* (the “Interim Cash Collateral Order”) (Doc. 88) entered on February 11, 2025.

<sup>3</sup> The term “Transaction” is defined as in the *Application to Employ and Retain Juniper Advisory LLC as Financial Advisory and Investment Banker* filed on the Petition Date (Doc. 21) and the Engagement Agreement attached thereto, but generally means a business undertaking or series of undertakings between the debtor and a purchaser/member substitute outside the ordinary course of business. By way of example, a “Transaction” may include, without limitation, a sale or lease of assets, or a sale or transfer of membership interests.

<sup>4</sup> The Debtor submits that its average gross revenue charges per month in 2024 were \$16,411,345, such that 80% of that amount would be \$13,129,076.

**A. The Court should approve the Incentive Plan pursuant to Bankruptcy Code § 363(b)(1) as an appropriate exercise of the Debtor’s business judgment.**

13. A debtor, “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), provided that the debtor can “show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd., et al., v. Montgomery Ward Holding Corp., et al. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999), citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Culp v. Stanziale (In re Culp)*, 550 B.R. 683, 697 (D. Del. 2015). Where there is a reasonable basis for a debtor’s business decisions, courts are deferential and tend not interfere with or second-guess those decisions. *See, e.g., Stanziale v. Nachtomi, et al. (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”); *In re Alpha Natural Resources, Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) (describing the business judgment test as “deferential”).

14. Use of incentives and transaction bonuses is a proper exercise of a company’s business judgment. *See In re Global Home Prods., LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007), citing *In re U.S. Airways, Inc.*, 329 B.R. 793, 795 (Bankr. E.D. Va. 2005). This is because business debtors rely on incentive plans (or KEIPs) to “encourage their managers and high-level employees...to produce and increase the value of [a debtor’s] estate.” *In re Country Fresh Holding Co. Inc.*, 2021 WL 2932680, at \*5 (Bankr. S.D. Tex. July 12, 2021), citing *Global Home*, 369 B.R. at 787. Here, the Incentive Plan is a sound use of the Debtor’s business judgment and directly incentivizes the Key Employees to generate value for the Debtor and its stakeholders for the reasons set forth herein.

15. The goal of this chapter 11 proceeding is to achieve a sale or restructuring transaction with respect to the Debtor that unlocks value for stakeholders. That goal cannot be

achieved if the Debtor does not continue operating its hospital and thereby maintain its value as a going-concern. It is important to incentivize the Key Employees, given that their management of the Debtor's operations is critical to meeting the Metrics and maintaining the value of the Debtor's estate.

16. The Metrics of the Incentive Plan were designed to incentivize the Key Employees to achieve a value-maximizing outcome for all stakeholders. Fundamentally, the Incentive Plan prioritizes the completion and confirmation of a chapter 11 plan, as well as the closing on any Transaction thereto. The other Metrics seek to ensure that the Debtor's hospital continues to operate at a certain level of revenue, while avoiding unwanted employee turnover. Because the it is designed to facilitate the Debtor's goals in this proceeding, the Incentive Plan is a valid use of the Debtor's business judgment and should be approved under Bankruptcy Code § 363(b)(1).

**B. The Incentive Plan is justified by the facts and circumstances of this case.**

17. Postpetition incentive plans that provide for payment to officers or managers are subject to approval under Bankruptcy Code § 503(c)(3). In order to pass muster under that section of the Bankruptcy Code, a proposed key employee incentive plan (KEIP) must, to the extent that it provides for payments to such officers, be "justified by the facts and circumstances of the case..." 11 U.S.C. § 503(c)(3). As courts have previously observed, that standard is, functionally, a restatement of the business judgment standard. *See In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D. N.Y. 2012), citing *Global Home*, 369 B.R. at 783 ("If [the proposed plans] are plans intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.").

18. When evaluating a debtor's business judgment with regards to a KEIP, courts typically consider the following six factors (the "Dana Factors"): whether (a) a reasonable

relationship exists between the proposed plan and the desired results; (b) the cost of the plan was reasonable in the context of the debtor's case; (c) the scope of the plan is fair and reasonable; (d) the plan is consistent with industry standards; (e) the debtor put forth sufficient due diligence efforts in formulating the plan; and (f) the debtor received independent counsel in performing due diligence and formulating the plan. *In re FirstEnergy Solutions Corp.*, 591 B.R. 688, 696-697 (Bankr. N.D. Ohio 2018), citing *In re Dana Corp.*, 358 B.R. 567, 576 (Bankr. S.D. N.Y. 2006). All of these factors have been met, such that the facts and circumstances of the case justify the Incentive Plan as a proper exercise of the Debtor's business judgment.

19. As an initial matter, a reasonable relationship exists between the Incentive Plan and the desired performance of the Key Employees. As described above, each component of the Incentive Plan—specifically, the enumerated Metrics—directly rewards the Key Employees for (i) ensuring that the Debtor confirms a plan in this case, and (ii) maintaining the Debtor's value as a going-concern until a closing is completed pursuant to that plan. Those goals simply cannot be achieved without the ongoing efforts of the Key Employees, who are being called upon to perform duties that are above and beyond what would otherwise have been required of their current roles.

20. These additional duties include, but are not limited to:

- a. Reviewing and verifying, or otherwise modifying, court pleadings, schedules, and other bankruptcy-specific documents, and providing evidentiary support as required;
- b. Providing extensive financial and other reporting data to counsel for document preparation;
- c. Communicating and working with the Debtor's employees to explain the bankruptcy process, and coordinating the continued operations of the hospital;
- d. Testifying in bankruptcy court hearings, including subjecting themselves to cross-examination;

- e. Participating at the initial debtor interview and Section 341 meeting;
- f. Addressing potential depositions or other forms of discovery; and
- g. Negotiating with numerous vendors and creditors.

21. Further, the scope and cost of the Performance Payments contemplated by the Incentive Plan are reasonable. The Incentive Plan is reasonable in scope because it only applies to the Key Employees, who are taking on exceptional administrative burdens to drive this chapter 11 case forward and maintain day-to-day hospital operations that are absolutely essential to the success of any value-maximizing Transaction. The Incentive Plan also has a maximum payout of \$105,000, which is a modest sum compared to the cost of losing the Key Employees. Losing the CEO/President and Senior Nursing Director would be utterly devastating to the Debtor's administration, and the Debtor will only be able to proceed through this bankruptcy process if these Key Employees take on responsibilities beyond their typical duties. The cost of the Incentive Plan is reasonable when accounting for the costs and associated delay of the alternative, which would involve taking on and training additional officers, trying to get them up to speed at break-neck pace.

22. The Incentive Plan is also consistent with industry standards. The terms of the Incentive Plan were developed by Mr. Lentz, the Debtor's Interim CFO, who specializes in the restructuring of healthcare organizations. Mr. Lentz is familiar with what is customary in this section in terms of incentivizing executives in connection with a major transaction. The Debtor exerted sufficient due diligence in its consideration of the Incentive Plan, and has also reviewed the terms of that Incentive Plan with its associated counsel.<sup>5</sup>

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<sup>5</sup> The Debtor has reviewed the Incentive Plan not only with its proposed bankruptcy counsel, Allen Stovall Neuman & Ashton LLP ("ASNA"), but also with its proposed corporate counsel, Frantz Ward LLP ("FW"). See the Debtor's applications to employ ASNA and FW filed on the Petition Date (Docs. 11 and 43, respectively).

23. The Debtor entered this chapter 11 case with the intent to enter into a sale or restructuring Transaction that maximizes value for all stakeholders. Despite that goal, the path to success remains challenging; completion of a Transaction is far from assured, and necessarily depends upon the Debtor's value as a going-concern remaining stable. If the Key Employees do not continue to devote time and effort outside of their regular duties to drive this chapter 11 case forward, the process will fail. For all these reasons, the Incentive Plan represents a sound exercise of the Debtor's business judgment, and thus is entitled to deference.

24. Where debtors have shown that bonus plans, such as the Incentive Plan proposed here, are justified by the facts and circumstances of the case and in the debtors' business judgments, courts in this and other districts have routinely authorized them. *See, e.g., 8e14 Networks, Inc., d/b/a Ananda Networks*, No. 22-10708 (BLS) (Bankr. D. Del. Oct. 5, 2022); *see also In re ASPC Corp., f/k/a AcuSport Corp.*, No. 18-52736 (JEH) (Bankr. S.D. Ohio May 16, 2018); *FirstEnergy Solutions, Corp.*, No. 18-50757 (AMK) (Bankr. N.D. Ohio May 14, 2018); *In re Wings of Medina Liquidation, Inc., a/k/a Quaker Steak & Lube Restaurant*, No. 15-52722 (AMK) (Bankr. N.D. Ohio Mar. 4, 2016).

25. Finally, the Senior Secured Lender and DIP Lender have approved the proposed Performance Payments under the Incentive Plan and will, effectively, be funding them through the Debtor's use of cash collateral and any DIP facility in this case. See the Cash Collateral Motion and the Interim Cash Collateral Order. The approval of the Debtor's Senior Secured Lender and DIP Lender serve as additional evidence that the Key Employees' efforts are essential to the Debtor's success in this proceeding.

26. For the reasons set forth herein, the Court should approve the Incentive Plan.

**C. The Incentive Plan is not a prohibited retention plan.**

27. Section 503(c)(1) of the Bankruptcy Code, with limited exceptions, prohibits a transfer to an “insider of the debtor for the purpose of inducing such person to remain with the debtor’s business.” That restriction, however, does not apply to performance-based incentive plans which are instead, as described above, governed by section 503(c)(3) of the Bankruptcy Code. *See In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D. N.Y. 2012) (“...§ 503(c)(1) does not prevent a debtor from adopting a plan that rewards insiders for achieving financial or other targets, rather than for simply remaining in the employment of the debtor, even though the incentive plan has a retentive effect.”). Moreover, a plan that has “some retentive effect” is nevertheless subject to evaluation under § 503(c)(3) rather than § 503(c)(1) so long as it is “overall...incentivizing in nature.” *Dana*, 358 B.R. at 571; *see also In re Residential Capital, LLC*, 478 B.R. 154, 171 (Bankr. S.D. N.Y. 2012) (“***When a plan is designed to motivate employees to achieve specific performance goals, it is primarily incentivizing***, and thus not subject to section 503(c)(1).”) (emphasis added). Courts routinely find that bonus plans are sufficiently incentivizing if they are “tied...to the achievement of particular financial milestones”. *See, e.g., In re Borders Group, Inc.*, 453 B.R. 459, 471-472 (Bankr. S.D. N.Y. 2011). Finally, when deciding whether a plan is “incentivizing”, courts focus on whether the plan “was designed to incentivize work”, even if some of the work was “already partially performed.” *In re Aralez Pharmaceuticals US Inc.*, 2018 WL 6060356, at \*5 (Bankr. S.D. N.Y. Nov. 19, 2018).

28. Bankruptcy Code § 503(c)(1) is nevertheless inapplicable because each component of the Incentive Plan, as described above, is tied to the achievement of specific and measurable goals, such as the confirmation of a plan in the Debtor’s proceeding, the closing on a Transaction related to that plan, and maintaining certain levels of productivity and retention at the Debtor’s

hospital until that Transaction is complete. Achieving each of the Metrics is far from a given, and will require the Key Employees to exert enormous and ongoing effort. Accordingly, the Incentive Plan is not a disguised retention plan, and should be approved by the Court.

#### **IV. CONCLUSION**

Based upon the foregoing, the Debtor respectfully requests that the Court enter an order approving the terms of the Debtor's Incentive Plan for its Key Employees, upon the terms and conditions set forth herein, authorizing the Performance Payments related thereto, and granting such other and further relief as is appropriate. A Proposed Order is attached as Exhibit A.

Respectfully submitted,

/s/ Richard K. Stovall

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*Proposed Counsel for Debtor*

**NOTICE OF MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE TERMS OF  
A KEY EMPLOYEE INCENTIVE PLAN, (II) AUTHORIZING PAYMENTS TO  
KEY EMPLOYEES IN ACCORDANCE THEREWITH,  
AND (III) GRANTING RELATED RELIEF**

The Debtor has filed a motion seeking approval of its key employee incentive plan.

Pursuant to Rule 9013-1(a) of the Local Rules of the United States Bankruptcy Court for the Northern District of Ohio, Western Division, this Notice is to all persons entitled to notice, that the respondent has fourteen (14) days, or such other time as fixed by Bankruptcy Rule or statute or as the Court may order, after service to file and serve a response or a request for a hearing, and that, if a response or request is not timely filed with the Court and served upon the movant, the Court may grant the relief requested in the motion without a hearing.

**SERVICE OF MOTION**

In conjunction with the filing of this motion, on February 14, 2025, I have requested service of the motion by the Debtor's Claims and Noticing Agent, Kroll Restructuring Administration, LLC, which will file a separate certificate of service.

/s/ Richard K. Stovall  
Richard K. Stovall (0029978)

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

|                       |   |                        |
|-----------------------|---|------------------------|
| In re:                | : | Case No. 25-30191      |
| The Bellevue Hospital | : | Chapter 11             |
|                       | : |                        |
| Debtor.               | : | Judge Mary Ann Whipple |

**ORDER (I) APPROVING THE TERMS OF A KEY EMPLOYEE INCENTIVE PLAN,  
(II) AUTHORIZING PAYMENTS TO KEY EMPLOYEES IN ACCORDANCE  
THEREWITH, AND (III) GRANTING RELATED RELIEF  
(DOC. \_\_\_\_)**

This matter comes before the Court upon the *Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance therewith, and (III) Granting Related Relief* (the “Motion”) (Doc. \_\_\_\_), filed by The Bellevue Hospital, debtor and debtor in possession (the “Debtor”). Through the Motion, and pursuant to 11 U.S.C. §§ 105(a), 363(b) and (c), and 503(b) and (c), the Debtor seeks entry of an order approving its key employee incentive plan and authorizing payments to its key employees accordingly.

Notice of the Motion has been given to the Debtor, the Office of the United States Trustee, Fifth Third<sup>6</sup>, the Master Trustee, the First National Bank of Bellevue, the Debtor's members, the Debtor's twenty (20) largest unsecured creditors, and those other parties requesting notice. Notice of the Motion was adequate and no further notice need be given.

Upon review of the matters presented in the Motion, the Court is satisfied that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest. The legal and factual bases set forth in the Motion establish just cause for the relief granted here. The Court finds the Motion to be well-taken and it is approved.

It is therefore ORDERED as follows:

1. The Debtor's proposed Incentive Plan for its Key Employees is approved.
2. The Debtor is authorized, but not directed, to make any and all payments under the Incentive Plan, if the applicable Metrics for any Performance Payments are met, as described further in the Motion.
3. This order shall be binding upon any successors and assigns of the Debtor, including any trustee appointed in the chapter 11 case or in any superseding proceeding.

SO ORDERED.

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<sup>6</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

SUBMITTED BY:

/s/ Richard K. Stovall

Thomas R. Allen (0017513)

Richard K. Stovall (0029978)

James A. Coutinho (0082430)

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