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**UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF WASHINGTON**

In re:

ASTRIA HEALTH, *et al.*,

Debtors and Debtors in  
 Possession.

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

**Adv. Proc. Case No. 20-80005-WLH**

Washington State Nurses Association,

Plaintiff,

v.

SHC Medical Center-Yakima, Astria  
 Health,

Defendants.

**REPLY TO WSNA'S OBJECTION  
 AND IN SUPPORT OF  
 DEFENDANTS' MOTION TO  
 DISMISS THE ADVERSARY  
 PROCEEDING**

**REPLY TO OBJECTION AND IN  
 SUPPORT OF MOTION TO DISMISS  
 ADVERSARY PROCEEDING**

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## INTRODUCTION

In *WSNA's Objection to Defendants' Motion to Dismiss* [Adv. Pro. Docket No. 13]<sup>1</sup> (the "Objection"), Plaintiff<sup>2</sup> raises several arguments, many of which are irrelevant and none persuasive, in an attempt to avoid dismissal of its Adversary Proceeding with prejudice as requested by *Defendants' Motion to Dismiss* (the "Motion") [Adv. Pro. Docket No. 6]. In doing so, Plaintiff seeks the continued pursuit of millions of dollars in administrative claims based upon Defendants' alleged violation of the federal Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. § 2100 *et seq.*, notwithstanding the fact that the subject terminations occurred after Court authorization of the emergency closure of the Medical Center. Similarly, WSNA seeks "double damages" under the Washington Wage Payment Act, RCW § 49.48.010 *et seq.*, and Rebate Act, RCW § 49.52.010, based upon the non-immediate payment of unused paid time off ("PTO") even though 1) all wages were indisputably paid in each employee's final paycheck, 2) a significant portion of unpaid PTO constitute general unsecured claims in that they accrued prior to the May 6, 2019 Petition Date and the 180-day priority period

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<sup>1</sup> "Adv. Pro. Docket No." refers to the docket number in this Adversary Proceeding No. 20-80005. "Bankr. Docket No." refers to the docket number in the lead Chapter 11 Case, *In re Astria Health, et al.*, Case No. 19-01189-11 (the "Bankruptcy Case").

<sup>2</sup> Capitalized terms not defined herein have the meaning ascribed to them in the Motion.

1 under § 507(a)(4)<sup>3</sup> and, 3) the Bankruptcy Code's priority and distribution scheme  
2 protects the Defendants from efforts to manufacture administrative claims as  
3 attempted here.

4 Leaving aside WSNA's motive, the arguments contained in the Objection fail  
5 to rebut operative law and the factual record that justify dismissal of all Complaint  
6 counts, with prejudice. With respect to its WARN Act claim, WSNA raises a series  
7 of unpersuasive and irrelevant arguments, including Debtors' stated desire when  
8 they filed for Bankruptcy to reorganize the Medical Center and that neither  
9 Defendants has converted to Chapter 7. Such facts are irrelevant to the issue of the  
10 Defendants' status as liquidating fiduciaries at the time of closure. Similarly  
11 irrelevant is WSNA's assertion that Astria (a holding company) constitutes a single  
12 employer because it continues its nonprofit ownership interest in the Medical  
13 Center; the critical fact is that Astria, like the Medical Center, constitutes a  
14 liquidating fiduciary for the purposes of closure of that hospital.

15 Similarly unpersuasive is WSNA's efforts to rebut the arguments that justify  
16 dismissal with prejudice of the state law claims for failure to pay all PTO, including  
17 prepetition PTO, in the nurses' final paychecks. Those arguments include  
18 1) WSNA lacks standing to pursue claims for individualized, monetary relief on

19 \_\_\_\_\_  
20 <sup>3</sup>Unless specified otherwise, all chapter, "§" and section references are to the  
21 Bankruptcy Code, 11 U.S.C. § 101-1532, and all "Bankruptcy Rule" references are  
to the Federal Rules of Bankruptcy Procedure.



1 behalf of the nurses; 2) Section 301 of the LMRA preempts the PTO claims  
2 because pursuit requires interpretation of the operative collective bargaining  
3 agreement, including the phrase “[t]he nurse who leaves their employment;” and 3)  
4 the Bankruptcy Code’s primacy and the fact that state law cannot override or  
5 otherwise subvert the Bankruptcy Code’s federal statutory priority scheme.

6 Finally, WSNA’s attempt to take issue with certain exhibits contained within  
7 Defendants’ requested judicial notice [Adv. Pro. Docket No. 7] is misplaced and, at  
8 bottom, do not undermine the factual record established in the Bankruptcy Case that  
9 establishes any required predicate to justify dismissal. Because WSNA does not  
10 explain how it can cure these fatal deficiencies, this Court should dismiss all of  
11 WSNA’s claims, with prejudice.

## 12 ARGUMENT

### 13 **I. WSNA’S WARN ACT ARGUMENTS ARE UNAVAILING BECAUSE** 14 **THE RECORD DEMONSTRATES THAT DEFENDANTS WERE** **LIQUIDATING FIDUCIARIES AND THUS NOT “EMPLOYERS” AT** 15 **THE TIME OF THE CLOSURE.**

16 In response to the Motion, WSNA raises several arguments that attempt to  
17 conflate the ultimate question before the Court under the WARN Act: whether  
18 WSNA can plausibly establish that Defendants qualify as “employers” within the  
19 meaning of the statute. WSNA has not met that burden because the record  
20 demonstrates Defendants were liquidating fiduciaries at the critical period for  
21 assessment under the WARN Act. *See, e.g., In re Century City Doctors Hosp.,*

1 LLC, No. ADV.LA 09-01101-SB, 2010 WL 6452903, at \*8 (B.A.P. 9th Cir. Oct.  
2 29, 2010) (“employer status” is “a required element that had to be properly alleged  
3 to state a viable claim for relief under the WARN Act”).<sup>4</sup> In doing this, Plaintiff  
4 raises the following non-persuasive arguments which are summarized as follows.

5 First, contrary to WSNA’s position, the liquidating fiduciary doctrine applies  
6 to any alleged employer that does not qualify as a “business enterprise,” including a  
7 Chapter 11 debtor-in-possession. Nor does WSNA’s argument make sense as  
8 Chapter 11 provides for liquidating plans as well as plans of reorganization.  
9 Second, WSNA asserts the novel argument that the Court must look 60 days before  
10 the closure to determine whether a defendant constitutes a liquidating fiduciary,  
11 rather than Defendants’ status as of the date of the closure. Not only does WSNA’s  
12 argument find no support in the case law, it would, if adopted, read the liquidating  
13 fiduciary exception out of existence. Third, it is irrelevant whether Astria, a  
14 holding company, continues to “operate,” because the WARN Act’s definition of  
15 “employer” focuses on the “business enterprise” at issue, which is the Medical  
16 Center, according to WSNA’s own allegations. Thus, this Court should find that  
17 WSNA failed to plausibly plead Defendants are WARN Act “employers” and

---

18 <sup>4</sup> Contrary to WSNA’s claim, this Court should *not* accept as true WSNA’s  
19 conclusory allegation that “Defendants were ‘employers.’” Objection at 11. *See*,  
20 *e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“the tenet that a court must accept  
21 as true all of the allegations contained in a complaint is inapplicable to legal  
conclusions. Threadbare recitals of the elements of a cause of action, supported by  
mere conclusory statements, do not suffice.”).

1 dismiss the WARN Act claims with prejudice. *See, e.g., Century City* 2010 WL  
2 6452903, at \*9 (on a motion to dismiss, holding that the plaintiff failed to plausibly  
3 allege that the defendant was an employer because it was acting as a liquidating  
4 fiduciary). These arguments are addressed in further detail below.

5 **A. The Liquidating Fiduciary Doctrine Applies to Chapter 11**  
6 **Debtors.**

7 WSNA erroneously argues that the liquidating fiduciary doctrine “only  
8 applies to those limited circumstances where a business is managed by a separate  
9 fiduciary deemed . . . the employer’s successor” and “generally does *not* apply to a  
10 Chapter 11 debtor-in-possession.” Objection at 12-14. WSNA’s primary argument  
11 that Defendants do not qualify as liquidating fiduciaries misstates the law.

12 The liquidating fiduciary analysis asks whether the alleged employer is a  
13 “business enterprise” operating “as a going concern”—not whether there is a  
14 “separate fiduciary successor” or under what Chapter the bankruptcy is  
15 proceeding.<sup>5</sup> For example, in *In re United Healthcare Systems, Inc.*, 200 F.3d 170,  
16 178 (3d Cir. 1999), the Third Circuit found a Chapter 11 debtor-in-possession  
17 hospital to qualify as a liquidating fiduciary. It was irrelevant that the case was  
18  
19

20 <sup>5</sup> Notably, although Chapter 11 plans generally provide for reorganization, they can  
21 provide for liquidation. *See, e.g.*, 11 U.S.C. § 1129(a)(11).

1 under Chapter 11 or that there was no separate fiduciary.<sup>6</sup> The key reason the  
2 hospital did not qualify as an “employer” under the WARN Act was because it was  
3 not operating as a “going concern” at the time of the closure. *Id.* at 173, 177-78  
4 (“Thus, the question for us to resolve is whether United Healthcare, as the debtor-  
5 in-possession, was operating as an ongoing business enterprise, or whether it was  
6 merely engaged in the liquidation of assets.”).

7 Further, the Ninth Circuit rejected a formalistic reading of the WARN Act’s  
8 definition of employer that would have excluded certain types of entities from  
9 coverage in *Chauffeurs, Sales Drivers, Warehousemen & Helpers Union Local 572*  
10 *v. Weslock Corp.*, 66 F.3d 241, 244 (9th Cir. 1995). There, the Ninth Circuit stated:  
11 “[W]e think the crucial question is not the status of the defendant’s legal  
12 relationship to the business but, instead, if at the time of the plant closing or mass  
13 layoff the defendant is responsible for operating the business as a going concern.”  
14 In fact, in both *Chauffeurs* and *Estrada v. Salyer American*, the shuttered entities  
15 were not even in bankruptcy, yet the courts still found the liquidating fiduciary  
16 exception to apply. *Estrada v. Salyer American*, No. C 09-05618 JW, 2010 WL  
17 11580074, at \*1, \*3 (N.D. Cal. Mar. 31, 2010).

18 WSNA’s authority does not provide otherwise. Undisputedly, 20 C.F.R.

19 \_\_\_\_\_  
20 <sup>6</sup> Indeed, the court expressly noted that “a debtor-in-possession[] is a fiduciary for  
21 its estate and for its creditors.” *Id.* 177 n.9 (citing 11 U.S.C. § 1107(a); *Commodity*  
*Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 355 (1985)).

1 § 639.4(c) governs the sale of a company and is thus inapplicable to the facts here,  
2 which deal with the closure of a facility. The additional cases WSNA cites are also  
3 irrelevant because they are from the Seventh Circuit which, unlike the Ninth Circuit  
4 and other Circuit Courts of Appeal, has not yet interpreted the liquidating fiduciary  
5 exception.<sup>7</sup> In any event, these cases (which all involve the same group of  
6 companies in bankruptcy) do not support WSNA's argument.

7 In *In re World Marketing Chicago, LLC*, 564 B.R. 587, 599-600 (Bankr.  
8 N.D. Ill. 2017), the court expressly recognized that a Chapter 11 debtor-in-  
9 possession could qualify as a liquidating fiduciary if—as is the case here—“the  
10 court has entered an order under section 1108 [of the Bankruptcy Code]  
11 constraining the right to operate a debtor's business.” *See also* Ex. F at 2 [Bankr.  
12 Docket No. 874] (Court entering the Closure Order under 11 U.S.C. § 1108, among  
13 other Bankruptcy Code provisions). In *Carroll and Newman*, the courts did not  
14 categorically hold that Chapter 11 debtors-in-possession cannot qualify as  
15 liquidating fiduciaries; they held only that the employer at issue did not qualify  
16 because, as of the date of the layoffs, the employer was seeking to reorganize. *See*  
17 *Carroll v. World Mktg. Holdings, LLC*, 418 F. Supp. 3d 299, 301, 308 (E.D. Wis.  
18 2019) (analyzing the employer's activities as of September 28, 2015, the date of the

19 <sup>7</sup> *See, e.g., Newman as Tr. of World Mktg. Tr. v. Crane, Heyman, Simon, Welch, &*  
20 *Clar*, No. 17 C 6978, 2020 WL 374693, at \*4 (N.D. Ill. Jan. 22, 2020) (“The  
21 Seventh Circuit has not yet had occasion to rule on whether ‘employer’ excludes  
liquidating fiduciaries.”).

1 closure); *Newman as Tr. of World Mktg. Tr. v. Crane, Heyman, Simon, Welch, &*  
2 *Clar*, No. 17 C 6978, 2020 WL 374693, at \*4 (N.D. Ill. Jan. 22, 2020) (same).

3 Furthermore, WSNA's contention that "active" liquidation is a prerequisite  
4 finds no support in law or logic. Objection at 8, 19. The liquidating fiduciary  
5 exception applies not only during active liquidation, but also when an entity acts "to  
6 preserve the business asset for liquidation or sale." *Chauffers*, 66 F.3d at 244  
7 (emphasis added); see also *Estrada*, 2010 WL 11580074, at \*4 (receiver was a  
8 liquidating fiduciary not because he was actively liquidating but because he  
9 "operate[d] the business to the extent that it would maximize the amount of money  
10 the secured creditors could recoup on their loans"). In those asset-preservation  
11 cases, the entities did not meet the definition of "employer" under the WARN Act  
12 "precisely because the [defendant has not] continue[d] the business in operation."  
13 *Id.* (quoting 54 Fed.Reg. 16,045 (1989); alterations in *Chauffers*).

14 That is exactly what Defendants are doing *vis-à-vis* the Medical Center. See,  
15 e.g., Ex. F, Closure Order, at 1 (finding that closing the Medical Center was  
16 "necessary ... to maintain the financial viability of the Debtors' remaining two  
17 hospitals"). Thus, Defendants are not WARN Act "employers" as a matter of law  
18 because they were not operating the Medical Center as a "going concern," and the  
19 WARN Act claim should be dismissed with prejudice.

20  
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1           **B. The Court Should Analyze Defendants’ Status at the Time of the**  
2           **Closure, Not 60 Days Before.**

3           WSNA’s timing argument—which asserts that Defendants’ liquidating  
4           fiduciary status must be assessed 60 days before the Court approved the closure of  
5           the Medical Center—is illogical and unavailing. Objection at 14-19.

6           In taking this position, WSNA erroneously claims that “none” of the cases  
7           cited in Defendants’ Motion involve an alleged WARN Act employer that “was a  
8           going concern at the time the notices were required.” Objection at 16. This is  
9           incorrect. In *Chauffers*, *Century City*, and *United Healthcare*, three cases cited in  
10          the Motion, the courts never looked to the alleged employer’s business operations  
11          60 days before the layoffs; rather, they expressly focused on the operations “at the  
12          time of the plant closing or mass layoff,” 66 F.3d at 244, and “at the time  
13          terminations occurred,” 2010 WL 6452903, at \*9; *see also United Healthcare*, 200  
14          F.3d at 173, 177-78 (focusing on the days surrounding the closure and discharges).  
15          The same is true of the courts in *Estrada*, 2010 WL 11580074, and *In re MF Global*  
16          *Holdings Ltd.*, 481 B.R. 268, 283-84 (Bankr. S.D.N.Y. 2012)—neither of which  
17          WSNA addresses in its Objection.<sup>8</sup>

18          Moreover, none of WSNA’s cases support that courts analyze the liquidating

19          <sup>8</sup> WSNA’s arguments as to *Chauffers* and *Century City* focus on the irrelevant facts  
20          that in those cases the alleged employers were appointed trustees and secured  
21          creditors. Objection at 16-18. As discussed in Part I.A., that argument is baseless.  
The issue is whether the entity meets the WARN Act’s definition of employer—not  
some other formalistic distinction.



1 fiduciary exception 60 days before the layoffs. *Carroll* and *Newman* both analyze  
2 the employer's activities as of the date of the closure. *Carroll*, 418 F. Supp. 3d at  
3 301, 308; *Newman*, 2020 WL 374693, at \*4. Neither *Collins v. Gee W. Seattle*  
4 *LLC*, 631 F.3d 1001 (9th Cir. 2011), nor *Childress v. Darby Lumber, Inc.*, 357 F.3d  
5 1000 (9th Cir. 2004), even mention the liquidating fiduciary exception. Instead,  
6 those cases involve the date to analyze whether the requisite *number of employees*  
7 have suffered an "employment loss" within the meaning of the WARN Act.  
8 *Collins*, 631 F.3d at 1005-06; *Childress*, 357 F.3d at 1005. The WARN Act  
9 regulations expressly provide that "[t]he point in time at which *the number of*  
10 *employees* is to be measured for the purpose of determining coverage is the date the  
11 first notice is required to be given." 20 C.F.R. § 639.5(a)(2). However, and more  
12 importantly, the WARN Act regulations and the case law interpreting it do *not*  
13 provide that same "snapshot" date for analysis of the liquidating fiduciary  
14 exception.

15 Indeed, if courts analyzed the liquidating fiduciary exception 60 days before  
16 the layoffs, the doctrine could not provide an exception to the WARN Act. On  
17 WSNA's reading, the liquidating fiduciary exception would require the same 60  
18 days' notice the WARN Act requires of "employers." WSNA's untenable position  
19 is highlighted by its argument that Defendants should have notified WSNA of the  
20 closure "no later than mid-November 2019." Objection at 7; Compl. ¶ 36. But

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1 WSNA does not even allege that Defendants knew they would have to close the  
2 Medical Center in mid-November 2019. Nor can they. *See e.g.*, Ex. M-1, Tr.  
3 1/14/20 Hr’g at 74:11-13 (discussing the fact that Astria and SHC Medical Center -  
4 Yakima’s boards of trustees did not pass resolutions authorizing but not requiring  
5 closure until December 3, 2019). According to WSNA’s own allegations, as of that  
6 date, Defendants were still trying to save the Medical Center with exit financing or  
7 a buyer. Compl. ¶ 28; *see also* Ex. M-1, Tr. 1/14/20 Hr’g at 107:17-21; Ex. I,  
8 Debtor’s Status Conference Report at §§ A(1) and (B). The WARN Act does not  
9 require clairvoyance.

10 Finally, WSNA cites *Law v. American Capital Strategies, Ltd.*, No. CIV.  
11 3:05-0836, 2007 WL 221671, at \*17 (M.D. Tenn. Jan. 26, 2007), but in that case,  
12 the court did not look 60 days back but focused on “the time the shutdown decision  
13 was made.” The court noted that the employer—which was not in bankruptcy—  
14 made the decision to conduct layoffs 20 days before implementing the layoffs and  
15 on a date that it continued to operate as a business enterprise. *Id.* That is not what  
16 happened here. In this case, Defendants could not close the Medical Center without  
17 Bankruptcy Court approval as the actions constituted an non-ordinary course  
18 transaction and required prior approval under §§ 105(a), 363(b) and 1108 and Rule  
19 6004. *See, e.g.*, [Bankr. Docket No. 867] (the “Closure Motion”). As of January 8,  
20 2020, Defendants were Court-authorized to start the immediate wind down of the

1 Medical Center's operations in order to protect patient safety and to preserve the  
2 remaining assets for creditors. Ex. F at 1-2, [Bankr. Docket No. 874] (the "Closure  
3 Order"); *see also* Ex. L-1, Tr. 1/8/20 Hr'g at 23:4-24:5 (noting that unless the  
4 Medical Center was closed promptly, continued operation of the Medical Center  
5 "endangers the debtors' ability to maintain staff and therefore maintain quality  
6 patient care for the future, not only of the medical center but Toppenish and  
7 Sunnyside"); *Debtors' Notice of Emergency Motion and Emergency Motion to*  
8 *Authorize Closure of Medical Center; Declaration of John Gallagher* [Bankr.  
9 Docket No. 867] at 32-33 ("The Medical Center losses have increased . . . [and]  
10 those losses have required a disproportionate allocation of the debtors' funds from  
11 all sources to keep the Yakima hospital operating. . . . [S]uch practice cannot  
12 continue as it endangers the viability of Sunnyside and Toppenish, as well as the  
13 prospect of a successful exit from bankruptcy for the entire system."); Ex. M-1, Tr.  
14 1/14/20 Hr'g at 60:15-17 (admitting J. Gallagher's declaration into evidence). In  
15 issuing its Order, the Bankruptcy Court found that the closure was "appropriately"  
16 sought "on an emergency basis" and was "necessary to ensure the safety of  
17 patients." [Adv. Pro. Docket 6] at 12 (quoting the Closure Order and Court's  
18 findings in transcript of hearing on WSNA's Motion for Reconsideration).

19 The Bankruptcy Court also found that the Defendants legitimately filed the  
20 Closure Motion under seal because, if staff (which includes WSNA nurses) learned

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1 about the request too soon, “patient and public health and safety” would have been  
2 jeopardized. *Id.* at 12-13. The Court stated:

3 [T]he Court’s view on this is that this motion was appropriately filed  
4 under seal in the first instance. . . . These are not just financial  
5 concerns, but the risk of what I’d call a ‘run on the bank,’ or risk of  
6 something tragic happening that poses a risk to health and safety. . . .  
7 I was legitimately concerned, and I think the debtors were legitimately  
8 concerned, that if the substance of the underlying motion became  
9 public prior to this hearing, that we could have very tragic things  
10 happening to human beings.

11 Ex. L-1 at 8:9-9:2.

12 Implicitly acknowledging that *United Healthcare* destroys WSNA’s  
13 argument, WSNA attempts to factually distinguish the case on the grounds that the  
14 Medical Center initially tried to reorganize and that Astria (and other Debtors)  
15 continue efforts to reorganize. Objection at 18-19. Both arguments raise irrelevant  
16 points.

17 First, the fact that the Medical Center initially attempted to reorganize is  
18 irrelevant. Rather, what is relevant is those efforts failed and that the Medical  
19 Center moved for authority to close before actually closing. In fact, upon approval  
20 of the Court’s January 8, 2020 Closure Order, the Medical Center began to  
21 immediate wind-down operations and was no longer operating as a going concern.

Second, it is irrelevant whether Astria Health continues to reorganize.  
WSNA has not alleged that fact in its Complaint. And even if the Court could  
consider an un-alleged fact on a Motion to Dismiss, WSNA’s argument still fails

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1 under the WARN Act's definition of "employer." As discussed in the next Section,  
2 Section I.C., whether Astria is operating *other* "business enterprises" not at issue in  
3 this case is irrelevant as to whether Astria was operating the Medical Center (the  
4 only "business enterprise" at issue in this case) as "a going concern."

5 For these reasons, the WARN Act count should be dismissed with prejudice.

6 **C. WSNA's Single Employer Allegations Are Irrelevant.**

7 WSNA's last argument on the liquidating fiduciary doctrine is that, even if  
8 the Medical Center is a liquidating fiduciary, Astria is not because WSNA has  
9 alleged Astria is a "single employer" and it continues to operate. Objection at 20-  
10 21. WSNA again misses the mark.

11 WSNA cites only one case that actually addresses the single employer issue,  
12 *In re MF Global Holdings, Ltd.*, No. 13 CIV. 07218 LGS, 2014 WL 4054281,  
13 (S.D.N.Y. Aug. 14, 2014), but that case does not help WSNA.<sup>9</sup> There, the

14 <sup>9</sup> WSNA's other authorities are off point. Objection at 21. *Davis v. Signal*  
15 *International Texas GP, LLC*, 728 F.3d 482, 485 (5th Cir. 2013), dealt with  
16 whether multiple facilities qualified as a "single site of employment," which is a  
17 different issue than whether an entity is a WARN Act "employer." The House  
18 Conference Report's vague, overbroad "General Motors" example simply assumes  
19 that General Motors is a single entity that owns all plants across the country and has  
20 nothing to do with the liquidating fiduciary exception. H.R. CONF. REP. 100-576,  
21 1046, 1988 U.S.C.C.A.N. 1547, 2079. Nothing in the WARN Act's legislative  
history suggests that Congress intended to eviscerate all corporate structures with  
its definition of "employer." *Cf. In re Bonham*, 229 F.3d 750, 767 (9th Cir. 2000)  
(noting the high bar to substantively consolidate two debtors' estates); *Meisel v. M*  
*& N Modern Hydraulic Press Co.*, 645 P.2d 689, 693 (Wash. 1982) (noting the  
high burden to disregard corporate formalities and that "[t]he absence of an  
adequate remedy alone" is insufficient).

1 plaintiff's complaint contained numerous, detailed factual allegations that the  
2 parent company employed the plaintiffs. *Id.* at \*1-2. Here, WSNA rests its case on  
3 conclusory allegations that the Court need not accept as true on a motion to dismiss.  
4 *See* Objection at 20 (pointing to Compl. ¶¶ 15-18); *see also Ashcroft*, 556 U.S. at  
5 678 (“Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of  
6 ‘further factual enhancement.’”) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
7 557 (2007)). Moreover, the record in this case paints a very different portrait of  
8 Astria from *MF Global Holdings*.

9       Unlike the parent company in *MF Global Holdings*, WSNA alleges that  
10 Astria was its member-nurses’ employer *only* by virtue of the single employer  
11 doctrine. WSNA does not allege that the nurses laid off in connection with the  
12 Medical Center’s closure ever worked at any other “business enterprise” other than  
13 the Medical Center. Indeed, WSNA’s Complaint does not mention any other  
14 hospital other than the Medical Center, other than making one conclusory, passing  
15 reference to “other Astria Health subsidiaries.” *E.g.*, Compl. ¶ 18.

16       That distinction is critical under the WARN Act’s definition of “employer,”  
17 which is expressly limited to “a business enterprise.” The “business enterprise” at  
18 issue, per WSNA’s complaint, is the Medical Center, and Astria is not continuing to  
19 operate the Medical Center as a going concern. WSNA’s single employer  
20 allegations do not and cannot change this fact.

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1 Further, reading the statute to ask whether Astria Health is operating *other*  
2 “business enterprises” not at issue in this case would eviscerate the liquidating  
3 fiduciary exception and expand the statutory definition of “employer” beyond  
4 recognition. For example, in *Chauffers*, the court did not ask whether the lender  
5 alleged to be a WARN Act employer was continuing to operate its lending  
6 business, as that “business enterprise” was not at issue in the case. 66 F.3d at 244-  
7 45; *see also Century City*, 2010 WL 6452903, at \*13 (same, as to the trustee alleged  
8 to be the WARN employer); *Estrada*, 2010 WL 11580074, at \*4 (same, as to the  
9 receiver alleged to be the WARN employer). Thus, WSNA has not met its burden  
10 to show that Astria Health meets the definition of “employer” under the WARN  
11 Act.

12 For all of these reasons, the Court should dismiss the WARN Act count with  
13 prejudice.

14 **II. WSNA’S RESPONSE FAILS TO REBUT THE ARGUMENTS FOR**  
15 **DISMISSAL WITH PREJUDICE OF THE STATE LAW CLAIMS.**

16 Similar to the WARN Act claim, the state law claims seeking damages for  
17 non-immediate payment of all PTO should be dismissed with prejudice for several  
18 reasons, including lack of standing, federal labor law preemption, and federal  
19 bankruptcy law supremacy.

20 **A. WSNA Failed to Meet Its Burden to Show Standing.**

21 WSNA argues that the Court should ignore the third prong for associational

1 standing, which prohibits associations from suing for monetary relief on behalf of  
2 members, because it would be “more efficient” to litigate the state law claims in  
3 this Court. This argument fails under the law and ignores the reality of WSNA’s  
4 state law claims.

5 WSNA’s state law claims essentially seek to litigate a wage-hour class action  
6 without any of the due process protections of FRCP 23, which imposes procedural  
7 hurdles both to enable Defendants to defend themselves and to protect the rights of  
8 non-party employees.<sup>10</sup> *E.g., Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 363  
9 (2011) (discussing due process concerns in class actions and the requirement of  
10 commonality amongst class member claims). And a number of courts have found  
11 paid time off claims cannot “efficiently” be litigated on a class wide basis because  
12 of the individualized nature of such claims. *E.g., Chavez v. Lumber Liquidators,*  
13 *Inc.*, No. CV-09-4812 SC, 2012 WL 1004850, at \*9 (N.D. Cal. Mar. 26, 2012)  
14 (denying class certification over vacation pay claim because it would “require the  
15 Court to determine the accuracy of [pay] records through testimony or other  
16 evidence—a highly individualized inquiry that would need to be repeated for each  
17 class member if the Court were to certify the class”). Just as in *Chavez*, the parties

18 <sup>10</sup> This Court should reject WSNA’s argument that this Court should grant it  
19 associational standing because otherwise it will just file the same claim in state  
20 court or bring a class action in this court. Objection at 25-26. WSNA’s “practical”  
21 argument fails to appreciate that those approaches require it to either meet the  
heavy burden needed to lift the automatic stay or to meet procedural requirements  
of Rule 23. WSNA cannot avoid these legal hurdles in the name of efficiency.

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1 may dispute issues like how much PTO a particular nurse is entitled to or whether  
2 that nurse is entitled to be paid out PTO under the CBA's terms given the nurse's  
3 tenure, whether the nurse transferred to another Astria hospital, and other individual  
4 factors. Such disputes will necessarily require testimony and other individualized  
5 inquiries to resolve.<sup>11</sup>

6 Tellingly, WSNA does not attempt to distinguish the litany of cases to which  
7 Defendants cite that hold that associations do not have standing to pursue individual  
8 claims for monetary relief. *See* Motion at 14-16. Instead, WSNA seeks to shift its  
9 burden onto Defendants by suggesting that it is Defendants that needed to cite a  
10 case where a union pursuing a WARN Act claim lacked associational standing to  
11 pursue a state law claim. Objection at 22. But WSNA cites no case where a court  
12 has *granted* associational standing on such facts, and it carries the burden on  
13 standing.

14 Indeed, the *only* cases WSNA cites are Washington state court cases that are  
15 readily non-controlling and factually distinguishable.<sup>12</sup> Moreover, the Supreme  
16

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17 <sup>11</sup> WSNA is also wrong that the parties would need to litigate its state law claims  
18 under the WARN Act. Objection at 24. The WARN Act does not require payout  
of all unused, accrued PTO as WSNA seeks in its state law claim. *Cf.* 29 U.S.C. §  
2104(a)(1).

19 <sup>12</sup> In *Pugh v. Evergreen Hospital Medical Center*, 312 P.3d 665, 666 (Wash. App.  
20 2013), the court analyzed the issue in the context of a settlement agreement.  
*Washington State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 287 P.3d 516, 519  
21 (Wash. 2012), did not address standing.



1 Court of Washington has expressly taken a broader approach to standing than the  
2 federal courts. *See Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 45  
3 P.3d 186, 190 (2002) (expressly adopting a broader approach than “many federal  
4 courts”); *see also Gen. Teamsters Local No. 174 v. Safeway, Inc.*, No. C07-1383-  
5 JCC, 2007 WL 9778080, at \*2 (W.D. Wash. Oct. 30, 2007) (“The Washington state  
6 court associational standing requirements are somewhat broader, however.”). Even  
7 under Washington’s broad rule, WSNA must show that its money damages are  
8 “certain, easily ascertainable, and within the knowledge of the defendant,”  
9 *International Association of Firefighters*, 45 P.3d at 190, which it cannot do given  
10 the individual factors that weigh on the PTO analysis, as discussed above. WSNA  
11 has failed to meet its burden to establish standing and therefore, the State law  
12 counts should be dismissed.

13 **B. The LMRA Preempts WSNA’s State Law Claims Because They**  
14 **Require the Court to Interpret the CBA.**

15 In its Objection, WSNA does not attempt to address the cases cited in  
16 Defendants’ Motion (at 18-19), including *Guardado v. Cascadian Building*  
17 *Management, Ltd*, which preempted a Washington Wage Payment Act claim under  
18 RCW § 49.48.010. No. C16-0303JLR, 2016 WL 3105041, at \*3 (W.D. Wash. June  
19 1, 2016). Instead, WSNA makes two broad, unsupported propositions to save its  
20 wage claims from preemption under the LMRA: that the Supreme Court has  
21 definitively resolved this issue in its favor; and that the Court need only “refer” to

1 the CBA, not interpret it. Both arguments fail.

2       WSNA first claims that the Supreme Court has held that a state law claim for  
3 untimely wages is never preempted by the LMRA, citing *Livadas v. Bradshaw*, 512  
4 U.S. 107 (1994). Objection at 26. WSNA grossly over-reads *Livadas*, which  
5 simply stands for the proposition that a state law wage claim that *refers* to a CBA to  
6 identify a wage rate, but does not require CBA interpretation, is not preempted.  
7 512 U.S. at 125. Indeed, the Supreme Court expressly rejected WSNA's reading of  
8 *Livadas* stating: "This is not to say, of course, that a § 203 penalty claim [for  
9 untimely wages] could never be pre-empted by § 301." *Id.* at n.19.

10       Here, WSNA's state law claim does not require the Court to "refer" to the  
11 CBA; as explained in Defendants' Motion (at 18-19), WSNA's state law claims  
12 require interpretation of the PTO provisions of the CBA to determine whether the  
13 nurses even have the right to payment of their PTO and when. *See, e.g., Atchley v.*  
14 *Heritage Cable Vision Assocs.*, 101 F.3d 495, 500 (7th Cir. 1996) (distinguishing  
15 *Livadas* because "whether there was an obligation under the CBA to provide the  
16 payments at a certain time and, if so, whether the employer breached that implied  
17 contract provision" required interpretation of the CBA). For example, WSNA  
18 claims that § 10.4 of the CBA entitles the nurses to payment of unused PTO  
19 "following termination." Compl. ¶ 38. But as Defendants noted in their Motion,  
20 the parties disagree with that interpretation and whether it applies in this case. *See*

1 Motion to Dismiss at 19 & n.10 (noting that § 10.4 applies only to nurses who  
2 resign with sufficient notice).

3       WSNA did not respond to those points. Rather, WSNA erroneously claims  
4 that the Court need not interpret the CBA because it “unambiguously permits” the  
5 nurses to cash out PTO upon the Medical Center’s closure. Objection at 29. And  
6 again without even acknowledging the interpretation dispute, WSNA points to an  
7 entirely different CBA provision than it cited its Complaint, § 6.6, and declares *that*  
8 provision also “unambiguously” provides a right to cash out PTO upon the Medical  
9 Center’s closure. Objection at 29.

10       Further, notwithstanding WSNA’s assertion to the contrary, the Court would  
11 be required to interpret the CBA to resolve a number of questions about whether the  
12 WSNA nurses are entitled to payment of all unused, accrued PTO, particularly on  
13 their last day of employment, as WSNA asserts. For example: When the Medical  
14 Center closed, did the nurses “leave[] their employment” within the meaning of  
15 CBA § 10.4, or does that provision only apply to nurses who resign “after giving  
16 the required three (3) weeks’ written notice”? *E.g.*, 11 Williston on Contracts §  
17 30:4 (4th ed.) (“A contract is ambiguous if ... the written instrument remains  
18 reasonably susceptible to at least two reasonable but conflicting meanings.”). Were  
19 WSNA nurses who previously worked at the Medical Center but who now work at  
20 Toppenish and Sunnyside “laid off” within the meaning of § 6.6 of the CBA? *See*,

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1 e.g., *Krygowski v. AT & T Corp.*, No. 02 C 3813, 2003 WL 164223, at \*3 (N.D. Ill.  
2 Jan. 23, 2003) (distinguishing *Livadas* because the plaintiff's claim that she was  
3 owed wages under state law following her discharge required the court to determine  
4 whether she was "laid off" within the meaning of the CBA, as the CBA granted  
5 plaintiff the right to the disputed wages only after a layoff). There may be  
6 additional issues of interpretation, but for the purposes of dismissal, the above  
7 questions demonstrate that the state law claims are preempted under the LMRA.

8 WSNA does not argue that it could cure the defect in these claims by  
9 amendment. Thus, this Court should dismiss the state law claims with prejudice.

10 C. **WSNA's State Law Claims, If Permitted, Would Improperly**  
11 **Preempt the Bankruptcy Code Priority And Distribution Scheme,**  
**Which Is Legally Superior.**

12 Contrary to the assertions of WSNA, the vast amount of the PTO arose pre-,  
13 not post-, petition, and therefore cannot be afforded administrative expense status.  
14 Yet, regardless of this point, WSNA's attempt to penalize the Defendants for  
15 observing the Bankruptcy Code priority and distribution scheme under state law  
16 fails as a matter of law.

17 A fundamental goal of federal bankruptcy law is to assure the appropriate  
18 and ratable distribution of estate assets to creditors with allowed claims based upon  
19 appropriate priority. *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S.  
20 651, 667 (2006); *Young v. Higbee Co.*, 324 U.S. 204, 210 (1945). To that end, the

1 Bankruptcy Code creates a comprehensive priority scheme designed to effect the  
2 equitable distribution such assets. *Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d  
3 1198, 1203–04 (9th Cir. 2005). When Congress acts in this arena, it is well-settled  
4 that federal law has primacy over contrary state law. *See Am. Sur. Co. of N.Y. v.*  
5 *Sampsell*, 327 U.S. 269, 272 (1946) (“[F]ederal bankruptcy law, not state law,  
6 governs the distribution of a bankrupt's assets to his creditors. . . .”); *Elliott v.*  
7 *Bumb*, 356 F.2d 749, 755 (9th Cir. 1966) (“[S]tate creation of priorities in various  
8 classes of creditors . . . would tend to thwart or obstruct the scheme of federal  
9 bankruptcy. . . .”); *Rosetta Stone Comm’s, LLC v. Gordon (In re Chambers)*, 500  
10 B.R. 221, 228-29 (Bankr. N.D. Ga. 2013) (“[P]rovisions granting priority in  
11 bankruptcy are narrowly construed . . . . [T]o the extent that a statute purports to  
12 establish the priority of claim over other claims, that statute is preempted by the  
13 Bankruptcy Code.”). Indeed, if Congress intended to require a debtor to pay in full  
14 all employee claims upon such employees’ separations of employment, it could  
15 have done so. Instead, Congress fashioned a limited priority status for such claims  
16 under § 507(a)(4) of the Bankruptcy Code, as well as the confirmation requirements  
17 under § 1129.

18 There can be no reasonable dispute that any allowed claim for PTO is subject  
19 to requirements of the CBA and company policy (which indisputably requires at  
20 least one year of service before PTO may begin to be cashed out) as well as

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1 bankruptcy law which holds that PTO that is earned over time should be calculated  
2 under an accrual method. CBA at § 10.4; *In re Hudson Healthcare, Inc.*, 2012 WL  
3 4088866, at \*2 (Bankr. D. N.J. Sept. 17, 2012) (“[T]he prevailing view regarding  
4 vacation pay claims under a collective bargaining agreement in bankruptcy is that  
5 such claims are accorded administrative priority only to the extent of the  
6 proportionate part of total vacation pay earned during the period from the beginning  
7 of the bankruptcy administration to the date of termination of employment.”)  
8 (quoting *In re Roth Am., Inc.*, 975 F.2d 949, 954-58 (3d Cir. 1992); *see also In re*  
9 *Steiny*, 2017 WL 1788414, at \*3 (Bankr. C.D. Cal. May 3, 2017) (allowing priority  
10 status to prepetition employee claims up to § 507(a)(5) cap, but finding that claims  
11 arising from prepetition work are otherwise unsecured). Moreover, WSNA has  
12 never opposed nor sought to modify the first day order that allows the Debtors, in  
13 their sole discretion, to pay prepetition wages and benefits that fall within the §  
14 507(a)(4) priority cap. [Bankr. Docket No. 83] (the “Wage Order”) at ¶ 9  
15 (authorizing, but not requiring, the Debtors in their “sole discretion” to pay unused  
16 PTO “that *accrued* within 180 days prepetition . . . .”) (emphasis added). As  
17 provided in the Motion, a claim that accrues prepetition is deemed a prepetition  
18 claim unless it falls within a priority provision under § 507(a)(4). *Kadjevich v.*  
19 *Decker (In re Kadjevich)*, 220 F.3d 1016, 1019 (9th Cir. 2000); *see also In re*  
20 *Ionosphere Clubs, Inc.*, 22 F.3d 403, 406 (2d Cir. 1994); *In re Certified Air Techs.*,

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1 *Inc.*, 300 B.R. 355, 367-68 (Bankr. C.D. Cal. 2003); *Hudson Healthcare*, 2012 WL  
2 4088866, at \*2. Thus, to the extent the PTO accrued prior to the petition date, it  
3 cannot be afforded administrative expense status and either constitutes a priority  
4 claim (which is subject to the applicable § 507(a)(4) statutory cap of \$13,650) or a  
5 general unsecured claim. *See Boeing North Am., Inc. v. Ybarra (In re Ybarra)*, 424  
6 F.3d 1018, 1026 (9th Cir. 2005). In spite of these claim priority limitations, WSNA  
7 demands full payment of all unused PTO regardless of when accrued, plus double  
8 damages equal to such PTO, as an administrative expense. Allowing such WSNA  
9 desired treatment would violate the Bankruptcy Code, violate the terms of the Wage  
10 Order and the Debtors' interim DIP budgets, as set forth more fully in the Motion.

11 Additionally, WSNA ineffectively contends that because certain employees  
12 represented by WSNA received the balance of their salaries and hourly wages by  
13 the date of their last paycheck, but not the entirety of accrued PTO, a state law  
14 violation was triggered which somehow entitles WSNA to an administrative  
15 expense claim for such amounts. This argument has no merit as the orders from  
16 this Court authorized, but did not mandate, the payment by the Debtors of certain  
17 amounts. *See* Interim Budget [Bankr. Docket No. 83] at ¶ 9 (authorizing  
18 Defendants "[t]o pay, **in the Debtors' sole discretion**, Employees for unused PTO  
19 [subject to certain conditions]" (emphasis added)); Interim Cash Collateral Order at  
20 § 15(a) and Interim Budget, attached thereto (providing, in relevant part, a carve-

21 **REPLY TO OBJECTION AND IN  
SUPPORT OF MOTION TO DISMISS  
ADVERSARY PROCEEDING**

25

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1 out only for employee payroll wages); Second Interim Cash Collateral Order at §  
2 14(a) and Interim Budget attached thereto (same). WSNA's requested relief stands  
3 in direct contradiction to not only the Bankruptcy Code but also this Court's orders.

4 In an attempt to delay the inevitable, WSNA asks this Court to wait until a  
5 later stage to make a ruling regarding whether any allowed PTO is entitled to  
6 administrative expense status. There is no basis for such delay. In order to reach  
7 its determination, the Court need not analyze any issue of material fact, rather it  
8 need only interpret its own orders, the Bankruptcy Code and relevant case law.  
9 Thus, the issue is ripe for determination and the Court should disallow WSNA's  
10 blatant attempt to use state law to upend federal bankruptcy law.

11 **III. THE EVIDENCE SUBMITTED WAS PROPER AND THE FACTUAL**  
12 **RECORD OTHERWISE SUPPORTS THE REQUESTED DISMISSAL**  
13 **WITH PREJUDICE.**

14 Of the thirteen documents for which Defendants requested judicial notice  
15 [Adv. Pro. Docket 7], WSNA objects to the Court taking judicial notice of four  
16 Exhibits (B, D, I, K) and makes a "limited objection" to two (L and M). Objection  
17 at 9-10. None of these objections have merit nor can they undercut the vast record  
18 in this Bankruptcy Case that supports dismissal with prejudice. Each Exhibit is  
19 addressed below.

20 Exhibit K, a Status Conference Report, is cited for the straightforward  
21 proposition that certain WSNA nurses have been rehired at other Debtors' facilities.

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1 Motion to Dismiss at 7 n.7. Although the Court need not rely on this fact to grant  
2 dismissal, it is beyond serious dispute that several WSNA nurses have been rehired  
3 at other Debtors' facilities.

4 Exhibits D and I, also Status Conference Reports, are cited for the equally  
5 unremarkable proposition that "from the Petition Date through December 2019, the  
6 Debtors worked to obtain exit financing or a buyer interested in acquiring the  
7 Medical Center under acceptable terms." Motion to Dismiss at 5. Nevertheless,  
8 this Court also need not resolve this issue, because this proposition is echoed in  
9 WSNA's own Complaint ¶¶ 21, 23, 28, and in the Court's findings of fact during  
10 the January 14, 2020 hearing, Ex. M-1 at 107:17-21.

11 The Motion does not rely on Exhibit B, which is Mr. Gallagher's Declaration  
12 in Support of the Emergency First Day Motions.

13 WSNA also makes a "limited objection" to Exhibits L and M, which are the  
14 Court's findings of fact stated on the record in two January 2020 hearings on the  
15 Medical Center's emergency closure. Objection at 10, n.6. WSNA quibbles that  
16 the Exhibits contain only excerpts of the Court's findings. While the Court should  
17 overrule such "objections," the Defendants attach hereto modified Exhibits L-1 and  
18 M-1, which contains complete transcripts of the hearings cited in the Motion.

19 Regardless, WSNA does not object to the accuracy of the findings of fact,  
20 and it does not dispute that this Court can take judicial notice of the Court's prior

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1 findings of fact. *E.g., Century City*, 2010 WL 6452903, at \*6 (“[C]ourt documents  
2 filed in an underlying bankruptcy case are subject to judicial notice in related  
3 adversary proceeding.”).

4 **CONCLUSION**

5 The Bankruptcy Court should dismiss WSNA’s Adversary Proceeding for  
6 failure to state a claim, with prejudice and without leave to amend and for all other  
7 relief that Court may find warranted by law or equity.

8 Dated: April 13, 2020

DENTONS US LLP

9 /s/ Sam J. Alberts

10 SAMUEL R. MAIZEL (Admitted *Pro Hac Vice*)  
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11 BUSH KORNFIELD LLP

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THOMAS A. BUFORD (WSBA #52969)

13 *Attorneys for Defendants*

14  
15  
16  
17  
18  
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20  
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# EXHIBIT L-1

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In Re:	)	Case No. 2019-01189
ASTRIA HEALTH	)	
	)	
	)	

VERBATIM TRANSCRIPTION OF PROCEEDINGS  
From audio recording  
January 8, 2020

TAKEN BEFORE THE HONORABLE WHITMAN HOLT



TRANSCRIBED BY:  
Andie Evered, CCR 2393

1

2 THE COURT CLERK: This is the time set for  
3 the status regarding -- this is a time set for the  
4 hearing regarding sealing motion and underlying  
5 motion in the matter of Astria Health, case number  
6 19-01189. On the line, we have Samuel Maizel for  
7 the debtor.

8

9 MR. MAIZEL: Good afternoon, Your Honor.

10 THE COURT CLERK: Sam Alberts, for the  
11 debtor.

12

13 MR. ALBERTS: Good afternoon, Your Honor.

14 THE COURT CLERK: Geoffrey Miller, also  
15 for the debtor.

16 MR. MILLER: Good afternoon, Your Honor.

17 THE COURT CLERK: Gary Dyer, for the US  
18 Trustee.

19 MR. DYER: Good afternoon, Your Honor.

20 THE COURT CLERK: William Kannel for UNB  
21 bank and Lapis Advisors.

22 MR. KANNEL: Good afternoon, Your Honor.

23 THE COURT CLERK: Dina Yunker, for the  
24 State of Washington -- for the -- attorney for the  
25 State of Washington.



1 Linda Atkins, for the State of Washington.

2 MS. ATKINS: Thank you, Your Honor.

3 THE COURT CLERK: Andrew Sherman for the  
4 unsecured creditors' committee.

5 MR. SHERMAN: Good afternoon, Judge.

6 THE COURT CLERK: Jessica Andrade  
7 (phonetic) for the unsecured creditors' committee.

8 MS. ANDRADA: Good afternoon, Your Honor.

9 THE COURT CLERK: Bryan Jarrick, for Lapis  
10 Advisors.

11 MR. JARRICK: Good afternoon, Your Honor.

12 THE COURT CLERK: Susan Goodman, for  
13 patient care.

14 MS. GOODMAN: Good afternoon, Your Honor.

15 THE COURT CLERK: Brian Donovan for HHS  
16 and Medicare.

17 MR. DONOVAN: Good afternoon, Your Honor.

18 THE COURT CLERK: Sara Watkins, for the  
19 City of Yakima.

20 MS. WATKINS: Good afternoon, Your Honor.

21 THE COURT CLERK: Audrey Udashen, attorney  
22 general for the State of Washington.

23 MS. UDASHEN: Good afternoon, Your Honor.

24 THE COURT CLERK: (Unintelligible) Iverson  
25 for the Health Care Authority.



1 MS. IVERSON: Good afternoon, Your Honor.

2 THE COURT CLERK: John Gallagher for  
3 Astria Health.

4 MR. GALLAGHER: Good afternoon, Your  
5 Honor.

6 THE COURT CLERK: Aaron Brown for the  
7 Department of Health and Human Services.

8 Mr. BROWN: Good afternoon, Your Honor.

9 THE COURT CLERK: Michael Rein for Astria.

10 MR. REIN: Good afternoon, Your Honor.

11 THE COURT CLERK: James Chiarelli for  
12 Piper Jaffray.

13 MR. CHIARELLI: Good afternoon, Your  
14 Honor.

15 THE COURT CLERK: Jack Parnell, for the  
16 State of Washington and Department of Health.

17 MR. PARNELL: Good afternoon, Your Honor.

18 THE COURT CLERK: Is there anyone else  
19 that wishes to be identified, but has not been?

20 MS. SCHUFFENHAUER: My name is Annette  
21 Schuffenhauer, I'm the Legal Director for  
22 Washington State's Medicaid program at the Health  
23 Care Authority.

24 THE COURT CLERK: Thank you. This is  
25 being recorded. Please proceed.





1           THE COURT: Good afternoon, everyone. So,  
2 we're here today on two matters. On Friday, the  
3 debtor had called an emergency motion under seal  
4 and filed a motion to seal that motion. So I'm  
5 going to take up the seal motion first.

6           So the seal motion, I think, leaves a  
7 compelling case for why the underlying motion  
8 should be sealed in the first instance, including  
9 potential threats to patients' health and safety  
10 prior to hearing on the underlying motion. And  
11 the underlying motion has, accordingly, been kept  
12 sealed this week. And I think that concerns that  
13 the debtors correctly articulated, as far as I  
14 know, has not materialized; there's nothing on the  
15 front page of the paper about this. But I  
16 reviewed the underlying motion in some detail, and  
17 I think given the discussion that's going to  
18 follow on this call, the details of what's in that  
19 motion are going to become public. And the  
20 underlying motion, or the need to continue to seal  
21 the underlying motion, is largely going to be  
22 moot.

23           The Court's inclination is to deny the  
24 motion to seal. And, after this hearing, have the  
25 entirety of the underlying motion that was filed



1 on Friday, publicly accessible on the case docket  
2 and the claims agent page.

3 So, Mr. Maizel, I'll hand it over to you  
4 and see if you're intending to continue to  
5 prosecute keeping anything under seal.

6 MR. ALBERTS: Your Honor, this is  
7 Sam Alberts. I think for this hearing, I will  
8 probably lead, with the Court's permission.

9 With respect to your question, the answer  
10 is no. We understand the Court's position and our  
11 understanding is that once this hearing concludes,  
12 what had been filed under seal will be lifted at  
13 -- by the clerk's office. But if not, we're happy  
14 to re-file the papers so that they become publicly  
15 available.

16 Thank you, Mr. Alberts. I spoke with the  
17 clerk's office this morning to confirm that  
18 there's a mechanism in place where the clerk can  
19 simply unseal it, so you don't need to file  
20 anything.

21 Would anyone else like to be heard on the  
22 motion to seal, which I think is being withdrawn,  
23 so no (unintelligible) -- but if anyone else would  
24 like to be heard on that, please feel free to  
25 speak up.



1 MR. SHERMAN: Your Honor, this is  
2 Andrew Sherman on behalf of the creditors  
3 committee.

4 I understand that the motion's being  
5 withdrawn, but from the committee's perspective,  
6 as articulated in the pleading that's on the  
7 docket, the damage has been done such that, as is  
8 clear from the participants on this call, no  
9 creditor has been availed of the opportunity to  
10 attend this hearing other than is set forth in the  
11 notice.

12 So I understand that it's being withdrawn,  
13 but as we move forward, the concern of lack of due  
14 process, of secrecy as to this -- beyond the  
15 relief and the underlying motion, continues. So I  
16 understand it's being withdrawn, but the lack of  
17 due process --

18 MS. YUNKER: Your Honor, this is  
19 Dina Yunker with the Attorney General's Office for  
20 the State of Washington and I have just a little  
21 nit to pick. Substantively, I'm pleased that the  
22 motion to seal is being withdrawn. I'm not very  
23 enamored at all with language that constitutes a  
24 recital that would reflect that -- that it had to  
25 be kept secret because it poses more financial



1 risk. I think the financial risk card was exposed  
2 back in May when the bankruptcy was filed. I  
3 don't know how this adds to the financial risk by  
4 keeping it sealed. And so I don't care for  
5 language in a proposed order that talks about the  
6 motion to seal being appropriate based on  
7 increased financial risk.

8 THE COURT: Thank you, Ms. Yunker. I  
9 think that's an appropriate observation. And the  
10 Court's view on this is that this motion was  
11 appropriately filed under seal in the first  
12 instance. And, notwithstanding the concerns  
13 articulated by Mr. Sherman, are appropriately kept  
14 sealed until today. These are not just financial  
15 concerns, but the risk of what I'd call a "run on  
16 the bank," or risk of something tragic happening  
17 that poses a risk to health and safety.

18 Certainly, monetary considerations,  
19 particularly in a case of this sort and given the  
20 timing, do not outweigh the public interest and  
21 right to know about this. I was legitimately  
22 concerned, and I think the debtors were  
23 legitimately concerned, that if the substance of  
24 the underlying motion became public prior to this  
25 hearing, that we could have very tragic things



1     happening to human beings. And that's not a risk  
2     that the Court's willing to take, but that  
3     certainly is different from a financial  
4     consideration. So thank you, Ms. Yunker. I  
5     concur with your comments on that point.

6             MS. YUNKER: Thank you, Your Honor.

7             THE COURT: All right. Well, the Court is  
8     going to deny the sealed motion.

9             Mr. Alberts, I'm going to just -- one  
10    observation regarding this is -- this is kind of a  
11    practice tip that I think I'll raise on the phone  
12    in case this comes up again in this case or any  
13    other matter.

14            When things are filed on the ETF system,  
15    the notice of electronic filing that goes around  
16    has an original filename that shows up. So I'm  
17    looking at the original filename relating to this  
18    motion, which everyone could see the moment it was  
19    filed on the docket. The original filename is  
20    C/user/vpn/desktop/Astrias sealed motion to close.  
21    And your motion to seal was motion to seal motion  
22    to close. So if someone was looking closely at  
23    the docket and these notices of electronic filing  
24    that the -- the jig was up at that point. So I  
25    think when things are filed under seal, it would



1 be prudent to pay extra attention to the name of  
2 the PDF because -- because, again, I think that  
3 the name of this file, as it was lodged with the  
4 system, gives away the underlying substance, if  
5 someone was paying close attention. So obviously  
6 nothing could be done about that now. But I just  
7 note it, if in this case or any other matter, if  
8 something needs to be filed under seal, extra  
9 close attention should be paid to the name of the  
10 PDF, so that you're not inadvertently revealing  
11 the content of what's being filed under seal.

12 MR. ALBERTS: Thank you, Your Honor. We  
13 agree and appreciate it.

14 Your Honor, this might be, with the  
15 Court's indulgence, a good time to provide perhaps  
16 an update of what has happened since the filing on  
17 Friday and our efforts to work with other parties  
18 to resolve concerns.

19 THE COURT: I think that's fine,  
20 Mr. Alberts. I think now that we've denied the  
21 motion to seal, it may be helpful if you just  
22 describe, in case anyone who didn't previously --  
23 didn't receive the notice is participating in the  
24 hearing, which is -- the conference line is open  
25 to the public so I don't know whose on, who may



1 not have identified themselves. This is also  
2 being recorded and will be available.

3 So why don't you, first, give a high-level  
4 overview of what your motion has requested and  
5 then walk through the update you described.

6 MR. ALBERTS: Certainly, Your Honor.

7 As the Court noted at the offset of this  
8 hearing, on last Friday the debtor filed a motion  
9 entitled, Debtor's Notice of Emergency Motion and  
10 Emergency Motion For Authorized Closure of Medical  
11 Center, along with the declaration of John  
12 Gallagher, who is the company CEO. And that was  
13 filed under seal, but is identified as Docket  
14 Number 866. We did that, Your Honor, and at that  
15 time served a limited universe of parties of -- of  
16 that actual motion. Those parties were limited to  
17 the official Committee of Unsecured Creditors or  
18 (unintelligible) lender in Lapis, UNB, and the  
19 United States Trustee.

20 On Monday, Your Honor, in discussing the  
21 matter with Chambers and other parties and  
22 receiving the comments of Mr. Dyer from the US  
23 Trustees Office over the weekend, we expanded the  
24 service of the underlying motion to government  
25 entities, both federal and state, who were on the



1 line. We were also informed by the Court at that  
2 time to file a notice of this telephonic hearing,  
3 setting the matter for today at this time, which  
4 was filed -- was not filed on the docket but which  
5 was served on all of the parties that I have  
6 mentioned with respect to the service of the  
7 underlying motion, along with a copy of the  
8 underlying motion and the motion to seal.

9 We then received a letter from counsel to  
10 the Committee, addressed to the Court, objecting  
11 to the feeling of the motion, not naming the  
12 underlying motion, but referencing the fact of a  
13 motion to seal. That matter was addressed in two  
14 chambers' conferences on Monday of this week. And  
15 pursuant to the notice of this hearing, we have  
16 circulated a copy of a proposed form of order. We  
17 have also received comments from people on that  
18 proposed form of order, which I'll get to in a  
19 moment. And that has been the sum and substance  
20 of the written communications.

21 In addition to that -- and I think of  
22 importance to note -- yesterday there were several  
23 conversations, first, with the CEO of Astria, Mr.  
24 John Gallagher and my law partner Sam Maizel, who  
25 spoke with the actual Secretary of the Washington





1 Department of Health, discussing the motion but  
2 also the closure plan.

3 And this, for those who are not aware of  
4 it, the underlying motion is a motion to close  
5 Yakima Hospital or Yakima Regional Medical Center,  
6 which is not something that anyone desired to do,  
7 but for the reasons set forth in the motion, and  
8 which I will get into in more detail, is  
9 necessitated at this time.

10 During those calls of yesterday, they  
11 spoke with the Secretary personally, described  
12 what was going on. We understand there may have  
13 been questions by the Secretary, but there was no  
14 objection raised.

15 Similarly, later in that day,  
16 Mr. Gallagher spoke with the Hospital Association  
17 for the State of Washington, the Department of  
18 Health for the State of Washington, and other  
19 hospitals in the area discussing the closure plan.  
20 Again, there were questions and issues discussed,  
21 but there was no objection raised.

22 The underlying motion, Your Honor, the  
23 motion to close, is obviously not something that  
24 the debtors came into this case wanting to do,  
25 and, frankly, have attempted to avoid having done



1 for some time. Unfortunately though, given the  
2 lack of positive response from potential bidders  
3 --

4 THE COURT: (Unintelligible).

5 MR. ALBERTS: I'm sorry, Your Honor?

6 THE COURT: Can I just interrupt you for  
7 just -- so are you -- are you still giving an  
8 update or are you shifting over to arguing that --  
9 the substance of the motion? I just wanted --  
10 (crosstalk)

11 MR. ALBERTS: I was shifting over, but why  
12 don't I pause there and allow the Court to ask any  
13 questions it has about the update.

14 THE COURT: I don't have any questions,  
15 and I appreciate the update.

16 So what I'd like to do regarding the  
17 underlying motion, is I'd like to hear from  
18 debtors' counsel about the substance of the  
19 motion, and why you think the relief is  
20 appropriate, any feedback you've gotten about the  
21 closure plan, if any. Then I'd like to hear from  
22 other parties, and I'll -- I'll go in order.  
23 We're going to have the creditor's committee go  
24 first, then Lapis, UNB Bank, if they'd like to say  
25 anything, then Mr. Dyer, then the patient



1 (unintelligible), and then finally the Washington  
2 Department of Health and any other federal, state,  
3 or local regulatory bodies or governmental  
4 agencies. And then finally, anyone else who's on  
5 the line, who would like to speak, will have an  
6 opportunity to do so.

7 I -- before I decide what to do with this,  
8 I'd like to hear from absolutely anyone who's on  
9 who would like to participate. And then, before  
10 ruling, Mr. Alberts, I'll let you respond to any  
11 comments or concerns raised by those other  
12 parties.

13 So, if that sounds like a sensible way to  
14 proceed, why don't you go ahead and get into the  
15 substance of what you're requesting and the  
16 factual and legal basis for that?

17 (Crosstalk)

18 MR. ALBERTS: Thank you, Your Honor.  
19 (Unintelligible) what we are requesting is  
20 authority to close Yakima Regional Medical Center.  
21 And we -- we have a proposed shutdown plan which  
22 we have included in our motion and have attached  
23 in our proposed form of order.

24 But the -- the background of this matter,  
25 Your Honor, is as the Court is aware, we filed



1 bankruptcy petitions for not only Yakima Regional  
2 Medical Center but two other hospitals and several  
3 affiliates on May 6 of 2019.

4 The Court has been treating these cases as  
5 jointly administered, but not substantively  
6 consolidated. There has been a committee  
7 appointed in this case that has been represented  
8 by Mr. Sherman and his firm of Sills Cummings, and  
9 that appointment was also back in May, May 24th.

10 The events leading to our decision to  
11 close the medical center -- the medical center is  
12 a 214-bed hospital, which was designed to provide  
13 a full complement of medical services, including  
14 open heart surgery, advanced imaging, robotics and  
15 other important services.

16 The Astria Heart Institute, which is part  
17 of the medical center, is a level-one cardiac and  
18 level-two stroke center, with a level-three trauma  
19 designation. The medical center also owns 14  
20 clinics with various specialties.

21 Back on September 1st, 2017, before the  
22 bankruptcy, the medical center became part of  
23 Astria and began doing business as Astria Regional  
24 Medical Center in October of that year.

25 Now, the closure, Your Honor, is being



1 sought for -- to ensure the safety of the patients  
2 and to (unintelligible) the financial viability of  
3 the debtors two remaining hospitals and related  
4 clinics. Those are facilities located in  
5 Sunnyside -- and are known as Sunnyside and  
6 Toppenish.

7           The Medical Center itself is operated at a  
8 significant monthly negative cash flow, even  
9 before the acquisition in 2017, and since then,  
10 has continued to operating the red. Efforts to  
11 improve the operation had been stymied by the  
12 implementation of a replacement electronic health  
13 record and revenue cycle, which resulted in severe  
14 cash constraints, and then ultimately the  
15 bankruptcy filing.

16           The debtors have historically funded these  
17 operations with excess cash generated by the other  
18 hospitals and clinics, principally Sunnyside. And  
19 post-petition, the medical center has been the  
20 largest and most consistent drain on the debtors'  
21 DIP financing received by both its initial lender,  
22 which was JNB and now its takeout lender in the  
23 form of Lapis.

24           Unfortunately, the medical center has not  
25 improved, operationally sufficient, to reach



1 break-even status, as it continues to require  
2 significant cash infusions on a weekly basis.

3 In contrast to the medical center,  
4 Sunnyside -- which is the sunny side of this case  
5 perhaps -- has continued to increase with -- with  
6 revenue growth and improvements to its revenue  
7 cycle. But unfortunately, the gains at Sunnyside  
8 have been offset by the medical center.

9 The medical center's losses have increased  
10 as a result of declining patient utilization. And  
11 combined with continued revenue cycle issues,  
12 those losses have required a disproportionate  
13 allocation of the debtors' funds from all sources  
14 to keep Yakima Hospital going.

15 Given the limited liquidity available to  
16 the debtors, this practice cannot continue as it  
17 endangers the viability of Sunnyside and  
18 Toppenish, as well as the prospect of a successful  
19 exit from bankruptcy for the entire system.

20 Now in addition, Your Honor, the debtors  
21 had sought alternative strategies. In fact, the  
22 debtors retained Piper Jaffray to serve as their  
23 investment bankers beginning in late July of 2019  
24 to provide assistance in, among other things, the  
25 sourcing and coordination of a refinancing or



1 alternative transaction that would support the  
2 continued operations of the medical center.

3 Following Piper Jaffray's retention, it  
4 developed marketing materials, including a teaser  
5 and a confidential information memorandum. They  
6 also established an electronic data room  
7 containing key information for parties to conduct  
8 an in-depth due diligence on the debtors.

9 As of December 15th of 2019, Piper had  
10 sent teasers to approximately 28 parties  
11 potentially interested in acquiring the assets, 12  
12 of which requested entry into the data room and  
13 signed non-disclosure agreements. Despite  
14 significant efforts by Piper Jaffray, the only  
15 buyer which expressed a willingness to acquire the  
16 medical center has done so only as part of an  
17 acquisition of all assets, including Toppenish and  
18 Sunnyside, but -- and this is important to note --  
19 at a significantly reduced offer from other offers  
20 which excluded the medical center.

21 While final expressions of interest for  
22 the potential alternative transaction have not  
23 been formally submitted to the debtors, investment  
24 bankers, Piper Jaffray is aware of only one other  
25 entity, which, just prior to the filing of the



1 motion, expressed an interest in potentially  
2 submitting a bid that would include the Medical  
3 Center in their offer. But again, that proposal  
4 does not provide the outcome that would benefit  
5 the estate in terms of providing recoveries to all  
6 creditors at the other facilities.

7 And, again, it is that the medical center  
8 has been just the financial drain that it has  
9 been. Likewise, Piper Jaff --

10 (Crosstalk)

11 THE COURT: Can I interrupt you on that  
12 point? Has anything developed regarding our  
13 proposal between Friday and today or --

14 MR. ALBERTS: No. Unfortunately not, Your  
15 Honor.

16 THE COURT: Okay, thank you.

17 MR. ALBERTS: There has not been. If  
18 there had been a development that provided, I  
19 promise, we would inform the Court of that, but  
20 unfortunately, it has not.

21 In terms of the exit financing, as of  
22 December 15th, Piper contacted approximately 132  
23 financial institutions potentially interested in a  
24 refinancing transaction, with 60 expressing enough  
25 interest to sign NDAs -- non-disclosure





1 agreements -- and who requested additional  
2 information.

3           Although the debtors collectively are  
4 seeking exit financing to allow the debtors to  
5 exit bankruptcy, initial expressions of interest  
6 from the lenders indicate that the medical center  
7 has a negative on the debtors' ability to obtain  
8 exit financing and no lender has agreed to loan  
9 against the medical center.

10           Indeed, the lenders have expressed concern  
11 that any transaction, including the medical  
12 center, would result in continued financial  
13 support from Sunnyside, thereby jeopardizing its  
14 operations -- the Sunnyside operations -- and  
15 subsequently the creditworthiness of the  
16 refinancing transaction.

17           Moreover, due in part to some recent  
18 comments and opinions shared in public, the debtor  
19 has experienced increased turnover in the nursing  
20 staff in the last six to eight weeks, making  
21 continued operations of a safe and effective  
22 hospital problematic.

23           In addition, Your Honor, there have been  
24 individuals associated with a competing facility  
25 that have attempted to solicit personnel away from



1 the debtors which have caused staffing issues at  
2 the hospitals and concerns of further staffing  
3 concerns.

4 Finally, on December 2nd, Your Honor, the  
5 Washington Department of Health -- DOH -- issued a  
6 ruling granting Virginia Mason Medical Center an  
7 elective PCI program. And as reflected in various  
8 pleadings filed with the Court, the medical center  
9 has a certificate -- this is Yakima Medical Center  
10 -- has a certificate of need for elective PCI  
11 procedures. As a result, the medical center had  
12 been the only hospital allowed to conduct elective  
13 heart procedures in Yakima, rather than two hours  
14 away in Seattle, for example. And that market  
15 differentiator was a driving force in the debtors'  
16 decision to fund the losses at the medical center  
17 as dedication to the community's access to  
18 healthcare was critical. So, this market  
19 differentiator has basically gone away. And as a  
20 result of that, one of the business cases to try  
21 to not only market the hospital but to keep the  
22 hospital up and going, has gone away with it.

23 The debtors have carefully considered  
24 reducing operations at the medical center as an  
25 alternative to a complete shutdown. But the



1 analysis, including analyzing revenue and expenses  
2 by service line to determine whether various  
3 combinations of service line reductions or service  
4 line combinations could result in a profitable or  
5 break-even operation for the hospital, indicates  
6 that they could not be restructured or repurposed  
7 along these lines so that a reduction on  
8 operations, or what we were calling a  
9 skinnied-down version of the medical center, just  
10 would not --would not be feasible under the  
11 circumstances.

12 So, Your Honor, given the medical center's  
13 dire financial picture, its increased operational  
14 challenges, its continued negative effect on the  
15 debtors ability to obtain exit financing, and the  
16 debtors focus on patient safety above all else,  
17 the debtors, in consultation with their  
18 professionals and having provided notice to the  
19 counsel for the Committee and its secure  
20 creditors, determined that it was necessary, but,  
21 unfortunately, unavoidable to shut down the  
22 medical center in the context of the Chapter 11  
23 basis.

24 And as we've noted, Your Honor, unless  
25 this done promptly, the medical center, which has



1     been unable to refinance their self, this  
2     endangers the debtors' ability to maintain staff  
3     and therefore maintain quality patient care for  
4     the future, not only of the medical center but  
5     Toppenish and Sunnyside, which are two hospitals  
6     owned by the debtor that provides services to  
7     critically underserved and vulnerable patients  
8     populations.

9             The debtors, as noted in our pleadings and  
10    I think as demonstrated by the communications  
11    between our CEO and the Department of Health, will  
12    continue to work closely with the Department of  
13    Health and local authorities to address the  
14    concerns they may have and comments regarding the  
15    closure plan.

16            And so for those reasons, Your Honor, we,  
17    the debtors, regrettably felt the need to move for  
18    the closure of the medical center. We believe it  
19    is the right decision.

20            Now, Your Honor, an argument could be made  
21    that there is not a requirement under bankruptcy  
22    law to seek a court authority, however, we think  
23    that it is prudent. This is a very important  
24    decision not just in the life of this case but for  
25    the community. And we did not want to simply take



1     this action unilaterally without first providing  
2     -- seeking the relief from the Court and  
3     notifying the parties that would be necessary in  
4     such a shutdown situation along with the major  
5     representatives of the creditor body, so the  
6     secure creditors and the Committee.

7             The closure plan itself, Your Honor, is  
8     described in detail in our motion and in the  
9     proposed form of order. In it, we tried to deal  
10    with -- and we think we have dealt with -- all of  
11    the major issues that will be necessary to  
12    effectuate the closure. That includes the  
13    secession of new in-patient admissions, the  
14    transfer, discharge and referral of patients,  
15    communications to employees, patients, providers,  
16    governmental entities, area hospitals, and the  
17    community at large. Some of those parties have  
18    already received communications, as evidenced by  
19    the fact that they are on this phone.

20            The safeguard, transfer, storage, and  
21    disposal of medical records, the disposal of  
22    pharmaceuticals, including controlled substances,  
23    the disposal and handling of medical waste and  
24    other hazardous materials, coordination with the  
25    emergency medical services -- EMS -- and removal



1 of medical center road signs and implementation of  
2 enhanced security measures because this will be a  
3 closed facility.

4 Above all, Your Honor, we believe the  
5 closure plan emphasizes patient safety. The  
6 debtors' plan, again, to work with the Department  
7 of Health and other relevant authorities and area  
8 providers, to prevent disruption of patient care  
9 and to assure a smooth transition of the debtors  
10 patients to new care providers.

11 As to the timeline, Your Honor, that is  
12 set forth in our pleadings. But for those who may  
13 not be aware of it, that is page 15, paragraph 14.  
14 And our proposed timeline is as follows: Once the  
15 order is entered -- so today -- immediately notify  
16 CMS, the Department of Health, the joint  
17 commission and local media, and send out  
18 communications to medical staff and others.

19 This order, plus one day -- again, it  
20 could happen today but we decided it's at least  
21 one day we may need -- contact local providers,  
22 Virginia Medical Center and others. They have  
23 already been notified of this closing or the  
24 prospects of the closing, but we will make sure  
25 it's clear to them that this closing is now



1     happening. Inform them of the closure and provide  
2     appropriate transfer agreements to avoid EMTALA  
3     violations.

4             Secondly, Your Honor, at this time frame  
5     the debtors will discharge patients to home, if  
6     possible, or home with home help or  
7     rehabilitation, or skilled nursing facilities if  
8     appropriate, with appropriate payment arranged.

9             Third, we will coordinate with medical  
10    staff to stop all elective admissions.

11            Fourth, we'll notify emergency medical  
12    services on diversion protocols of all patients.

13            Five, notify local media that the  
14    emergency department will be closing and when.

15            Six, begin the process of discharging  
16    patients in the normal course and work with  
17    discharge planning regarding the potential need to  
18    transfer patients with longer length of stay  
19    and/or make arrangements for home health services  
20    for appropriate follow-up care.

21            Seventh, patient medical records will be  
22    copied, hard copied if possible, or electronic  
23    versions should be prepared and submitted to  
24    accepting patients to the hospitals in the Greater  
25    Yakima Valley with appropriate level of care or a



1 hospital of choice with appropriate level of care.

2 The order, plus three days, Your Honor, we  
3 are ceasing all elective in-patient admissions to  
4 the medical center.

5 The order, plus five days, several things.  
6 Actually two major things: Complete the medical  
7 center emergency department closure; and, two,  
8 conclude and cease all elective surgery.

9 The order, plus seven days, Your Honor, we  
10 have four items: Complete the medical center  
11 intensive care unit's closure; two, complete the  
12 medical center intermediate center closure; third,  
13 complete the medical center medical and surgical  
14 unit closure; fourth, complete the medical center  
15 acute care hospital closure and cease clinical  
16 operations which we are defining as the closure  
17 date.

18 In addition, Your Honor, we want to  
19 emphasize that the most critical aspect of our  
20 plan is insuring care for the debtors' patients.  
21 The majority of the currently admitted patients  
22 will be discharged in the ordinary course, and, if  
23 necessary, provide its information and assistance  
24 to make follow up appointments with replacement  
25 providers. In-patients will be notified of the





1 anticipated closure and will be transferred, along  
2 with their medical record information, to a  
3 hospital in the Greater Yakima Valley or a  
4 hospital of the patient's choice.

5 Arrangements with ambulance carriers will  
6 be in place to accommodate the orderly transition  
7 of all patients and the debtors expect to complete  
8 the transfer and discharge of acute patients by  
9 that closure date.

10 With respect to medical records safeguard,  
11 storage, transfer, and disposal, the safeguard,  
12 storage, transfer, and disposal of medical records  
13 are also an important element of our closure plan.  
14 The debtors currently store a significant portion  
15 of their physical patient medical records with a  
16 pre-petition vendor specializing in document  
17 management with a separate pre-petitioned vendor  
18 maintaining all medical records. The debtors will  
19 continue to work with pre-petition vendors to  
20 maintain all physical and electronic medical  
21 records for the medical center. Written  
22 notification of how to locate patient records will  
23 also be sent to all physicians currently on active  
24 staff of the medical center, along with a protocol  
25 for transferring such records.



1           Finally, Your Honor, the debtors will  
2   follow the procedures established under Section  
3   551 of the code for disposal of patient records.

4           Our communications, Your Honor, regarding  
5   the closure plan, the debtors have developed a  
6   comprehensive approach to keep patients,  
7   employees, and government agencies, area hospitals  
8   and the community at large informed of the closure  
9   process. In particular, we will (unintelligible)  
10   contact area hospitals and outpatient practices to  
11   advise them of the closure and to discuss  
12   procedures for the transfer of patients.

13           In addition, the debtors will notify the  
14   fire department and the appropriate regulatory and  
15   government agencies of closure.

16           As also noted, the debtors intend to  
17   follow the procedures of the bankruptcy code  
18   regarding patient medical records and will provide  
19   written notice to all physicians currently on  
20   active staff.

21           With respect to employees, in addition to  
22   appropriate notices to be sent advising them of  
23   the closure and their termination, the debtors  
24   intend to schedule job fairs for displaced  
25   employees and provide information to displaced



1 employees about open positions at Toppenish and  
2 Sunnyside, which are also operated by the debtors.

3 As noted, the hospitals are not in any way  
4 -- those hospitals, Sunnyside and Toppenish -- are  
5 not subject to the closure plan. They are not  
6 closing.

7 Disposal of controlled substances --  
8 pharmaceuticals, medical waste and other hazardous  
9 materials -- the debtors will manage and dispose  
10 of controlled substances, pharmaceuticals, medical  
11 waste and other hazardous materials in accordance  
12 with state and federal guidelines.

13 Medications, including controlled  
14 substances, radioactive materials, chemicals,  
15 medical waste, infectious materials and other  
16 hazardous materials will be identified, secured,  
17 inventoried, then destroyed, disposed of, returned  
18 to vendors or transferred to other providers, as  
19 appropriate. The medical centers will have  
20 vendors to manage the disposal of medical waste  
21 and infectious materials. After termination of  
22 services, the debtors will also retain an outside  
23 vendor to decontaminate hot rooms.

24 Your Honor --

25 THE COURT: Mr. Alberts, just before you



1 continue, can I ask a couple questions about the  
2 closure plan? And, these may be questions that  
3 Mr. Gallagher or Mr. Rein are best situated to  
4 answer, and they should feel free to jump in.

5 The debtor filed this motion on Friday,  
6 today's Wednesday. Assuming I enter the order  
7 today are all -- this is a significant undertaking  
8 in a week. Are the people and logistics lined up  
9 to get this going on that same timeline? I mean  
10 is this now all in place?

11 MR. GALLAGHER: Your Honor, this is John  
12 Gallagher. Yes, sir, it is.

13 THE COURT: Okay. Thank you,  
14 Mr. Gallagher.

15 And then my second question is, I just  
16 want to ensure that the debtors are comfortable  
17 and they have sufficient liquidity to incur the  
18 costs necessary to implement this plan on the  
19 timeline proposed. Do you have the resources  
20 necessary to get this done?

21 MR. GALLAGHER: Yes, sir, Your Honor, we  
22 do.

23 THE COURT: Okay. Thank you.

24 MR. GALLAGHER: You're welcome.

25 THE COURT: Mr. Alberts?



1 MR. ALBERTS: Okay. Thank you, Your  
2 Honor. So that is our closure plan.

3 In terms of the authority to proceed in  
4 this way, Your Honor, we believe there are several  
5 statutory bases that permit the actions that we're  
6 seeking. Section 105 of the code in conjunction  
7 with section 363(b) and 1108 permits the relief.  
8 Closure of the Medical Center will preserve the  
9 debtors' rights to use their other property to  
10 stymie continued losses and to maximize value to  
11 their estates through the continued operations at  
12 Toppenish and Sunnyside, which themselves provide  
13 services to critically underserved and vulnerable  
14 patient populations. Otherwise, an inability to  
15 gain control over future mounted losses could  
16 arguably cause an administrative insolvency in one  
17 or more of the estates at a later date.

18 Your Honor, the right of debtors to close  
19 hospitals is well established. There have been  
20 several cases we have cited, including Gardens  
21 Regional Hospital. In addition, today, Your  
22 Honor, the Court in the Verity case in Central  
23 District of California authorized the closure of  
24 St. Vincent's Hospital located in Los Angeles, on  
25 just a few days advanced motion. And that -- that



1 process was approved by the bankruptcy court.  
2 There are several other instances where a closure  
3 has been permitted.

4 We think that the debtors' business  
5 judgment, in justifying this closure, is without  
6 rebuttal and without legitimate dispute.

7 Quite candidly, Your Honor, I think the  
8 parties, even at the last hearing on just debt  
9 financing, saw that this was a real possibility.  
10 While not stated publicly, that closure was -- was  
11 going to happen for Yakima. All of the signs  
12 indicated that absent some strong indication of  
13 interest by a purchaser or a refiner that would  
14 justify keeping this facility open, that it would  
15 have to close.

16 In fact, in the context of that hearing on  
17 debt financing, the debtors borrowed the minimal  
18 amount necessary to get us to the point and left  
19 open the issue of whether more would be necessary.  
20 And that really was dependent upon what would be  
21 happening with Yakima. So there will be an  
22 alteration, if this motion is granted, to the  
23 budget of what is needed going forward. And if  
24 there is a silver lining to this, it is that the  
25 anticipated burn to the system will be decreased



1 significantly by the closure of Yakima Hospital.

2 In terms of the relief requested, Your  
3 Honor, we think that the evidence, as supported by  
4 the declaration of John Gallagher and the evidence  
5 of -- throughout the case that has been brought by  
6 way both of declaration and in-court testimony,  
7 justifies the relief being sought. Our paramount  
8 concern, again, is patient safety, not only for  
9 Yakima but the other facilities, and we believe  
10 that closure is warranted as a result of that.

11 In terms of the form of order, Your Honor  
12 -- and I will let others discuss with you their  
13 concerns with it, specifically -- to the extent  
14 that we did not address it, we received comments  
15 from Lapis, the US Trustees Office, and I believe  
16 it was the aide to your Department of Health,  
17 Ms. Yunker, provided comments as well. We have  
18 included the comments of Lapis. We have included  
19 most of the comments from the US Trustee. There  
20 are two -- there's one comment remaining from the  
21 US trustee and one comment from Ms. Yunker that is  
22 an open issue and -- as to them. But our  
23 position, and what it goes to, is the effect of  
24 state law on our ability to implement this closure  
25 plan.



1           What we believe is, Your Honor, that this  
2   plan is -- while we are certainly willing to  
3   discuss elements of the plan with the AG's office  
4   and the Department of Health and continue to work  
5   with them on it, we believe that this plan is  
6   governed -- is authorized by bankruptcy law. And  
7   while there is no question that we are not seeking  
8   to violate state law in terms of health and  
9   safety, there is a concern that if we make this  
10   order subject to any non-applicable bankruptcy  
11   law, that it creates great ambiguity as to what  
12   may happen next in terms of the closure plan.

13           THE COURT: Mr. Alberts, can I ask you  
14   about that? Because that was something I didn't  
15   see any (unintelligible) and I didn't understand  
16   that you were asking me to preempt anything. And  
17   there is nothing in section 363, unlike section  
18   1123 -- and section 1123 is very narrowly  
19   interpreted in the Ninth Circuit under the  
20   (unintelligible) decision, that even in  
21   (unintelligible) today any ability to preempt  
22   applicable non-bankruptcy law in this context and  
23   in fact, in judicial code section 959(b) states  
24   that trustees expressing, including debtors in  
25   possession, are required to operate in connection





1 with applicable non-bankruptcy law.

2 So you said this is done pursuant to the  
3 bankruptcy code but where does the bankruptcy  
4 code, or really any statute, indicate any intent  
5 to preempt anything? Because I -- I don't see  
6 that and this is something I anticipated may arise  
7 and I don't --

8 (Crosstalk)

9 MR. ALBERTS: (Unintelligible).

10 THE COURT: -- I don't -- I'm not even  
11 sure you could do it under a section 1123 as  
12 interpreted by the Ninth Circuit Court of Appeals  
13 and (unintelligible) but I see nothing else in the  
14 statute indicating any (unintelligible) effect.

15 MR. ALBERTS: Your Honor, I think with  
16 respect to your comment as to section 959, Section  
17 959, it's been ruled upon one of the cases cited  
18 to is -- well, not cited to but we can refer you  
19 to the Gardens decision, which is at 567 BR 820  
20 (unintelligible) 29 through 30, which is a  
21 bankruptcy court central district case 2017. And  
22 I will quote that decision. "Section 959(b)  
23 requires the debtor to 'manage and operate the  
24 property in its possession' according to the  
25 requirements of valid law of the State in which



1 such property is situated, in the same manner,  
2 that the owner or possessor thereof would be bound  
3 to do if - in possession thereof."

4 First of all, Your Honor, 959(b) applies  
5 only when a debtor continues to operate its  
6 business and does not apply where, as here, the  
7 debtor is liquidating its assets. And then other  
8 citations do support that position include  
9 (unintelligible) vs Wealth Management LLC at 628 F  
10 third, 323 (unintelligible) 334, which is a  
11 Seventh Circuit 2010 decision. And the applicable  
12 quotation there is, "Modern courts have, ellipses,  
13 concluded that 959(b) does not apply to  
14 liquidations." Other cases that --

15 THE COURT: Mr. Alberts, can you pause? I  
16 mean, you're not selling anything. This is not  
17 you're closing, you're operating to cease  
18 operations. I mean, I think that central district  
19 case you cited was a 363 sale, right? Where the  
20 courts held that the 363 sale process preempted  
21 the need to get approval from the California State  
22 Attorney General, right? I mean isn't that what  
23 that case is about?

24 MR. MAIZEL: Let me help here. This is  
25 Sam Maizel, Your Honor, and since that was -- the



1 Gardens case is my case. The answer to your  
2 direct question is yes. But the context of the  
3 ruling is not relying on 363. It actually just  
4 (unintelligible) in that decision, went and looked  
5 at the case law and the precedent related to  
6 959(b), and we argued it in that context, and we  
7 can provide supplemental briefing. But the vast  
8 majority of courts have exempted liquidating  
9 estates and trustees from the application of  
10 595(b) because the bankruptcy code says you have  
11 to manage and operate the property for that to  
12 apply.

13 And while there's no legislative history  
14 and there's not a lot of case law trying to define  
15 it, what the courts, that have looked at it, have  
16 looked at the plain language of those two words.  
17 And they talk about managing and operations  
18 causing it to function. And they draw the  
19 conclusion that if what you're doing -- and what  
20 we're doing here is directly analogous to what a  
21 Chapter 7 trustee would do for this estate. Now,  
22 not applying it to other states and other  
23 hospitals, but to this estate, what we're doing is  
24 --the only thing we're doing is shutting it down,  
25 just like a Chapter 7 trustee would do, and



1 closing it.

2 And in that context, I think -- I just  
3 think the precedent is pretty clear, that it does  
4 not -- that 959 has not been held applicable.

5 THE COURT: I'm surprised by that,  
6 Mr. Maizel, because I'm not aware of a  
7 (unintelligible) that Chapter 7 trustees are given  
8 a carte blanche exception to applicable law.

9 (Crosstalk)

10 MR. MAIZEL: (Unintelligible).

11 THE COURT: And I think that the system is  
12 (unintelligible) versus Brown, I mean that's  
13 inconsistent with a lot of things. I'm not aware  
14 of the -- the question I guess I have is, is this  
15 something I need to decide today? Because if  
16 you're requesting that I (unintelligible) and  
17 categorically applicable non-bankruptcy law, I'm  
18 not prepared to do that today.

19 (Crosstalk)

20 MR. MAIZEL: Under --

21 THE COURT: (Unintelligible).

22 MR. MAIZEL: Your Honor, first of all, I  
23 don't know that this is a real issue because  
24 unlike in California, where we just literally had  
25 to address this issue this morning in the Verity



1 case, I'm not aware that there are Washington  
2 State regulations or statutes that deal with  
3 closing, you know, timelines and such. But the  
4 State law attorneys are on and the State lawyers  
5 are on and they can better address that issue.

6 And we're not suggesting some complete --  
7 we're not suggesting that we are no longer bound  
8 by state law providing patient care while we're  
9 shutting down, or other applicable health or  
10 safety codes. I think the context here is just  
11 our concerns that if there was something that  
12 would either require us, as in California, to give  
13 some mandatory notice period before we start  
14 shutting down. I mean, we're not suggesting that  
15 while we're operating, we're somehow exempt from  
16 the rules regarding our conduct of patient care.

17 MR. ALBERTS: Your Honor, just to add to  
18 that, there was an argument in Verity that there  
19 was a time period that was substantially longer  
20 than the scheduled closure period that was raised  
21 under state law, I believe it was 60 or 90 days.  
22 And so we just didn't want to be in a situation  
23 where we put in an order that we were subject to  
24 non-bankruptcy applicable law that would somehow  
25 derail the complete closure. That was the purpose



1 of wanting to make, whatever is applicable law, at  
2 least note that it doesn't undermine the closure  
3 plan. So that was the point of the change that we  
4 had made to the proposed order and circulated late  
5 this day, which captures some of the concern  
6 raised by Mr. Dyer and the counsel for the AG, but  
7 didn't make the bankruptcy rulings subsumed below  
8 whatever applicable law may or may not exist out  
9 there.

10 THE COURT: I'd like to hear from the  
11 government on this, but my inclination on this --  
12 again, I think even assuming (unintelligible)  
13 section 959(b) (unintelligible) and Mr. Maizel's  
14 (unintelligible) and I'm not familiar with that  
15 case law and I'm not sure that's consistent with  
16 the text of the statute. I don't see an  
17 affirmative preemptive provision anywhere, again  
18 in contrast to section 1123 which has an expressed  
19 preemptive provision. And I think you need more  
20 than just a negative inference out of that reading  
21 of 959(b). I mean, I think we can look at, for  
22 example, the recent decision in Technology, which  
23 rejects negative inferences of exactly this sort,  
24 as sufficient to hold that amount of weight.

25 But sitting here today, I don't know that



1     this is (unintelligible). I don't know that I  
2     need to rule on this. There may not be any  
3     applicable non-bankruptcy law that you don't  
4     intend to comply with. I think it would be  
5     prudent for you to comply with applicable  
6     non-bankruptcy law and if there's -- I mean,  
7     again, (unintelligible) versus Brown suggested  
8     administrative (unintelligible) liability if you  
9     don't, and that's expressly applied to Chapter 7  
10    trustee (unintelligible) that was a bankruptcy  
11    trustee (unintelligible) liquidating assets.

12           So my view on this is -- and again, I'd  
13    like to hear further from the government when  
14    there's an opportunity to speak -- is that I think  
15    if this becomes a (unintelligible) pursuit, I want  
16    to hear it on an expedited basis, and I'd like  
17    more briefing on it. But I don't think we need to  
18    put in the order that it's applicable to  
19    non-bankruptcy law. But I'm also not putting in  
20    the order that I'm preempting any applicable  
21    non-bankruptcy law. And I am skeptical, to say  
22    the least, that there's preemptive affecting this  
23    context given the absence of a statute even  
24    suggesting affirmative preemptive effect. But I  
25    don't need to definitively decide that today and



1 I'm not deciding that today.

2 If this becomes an issue between the  
3 government and the State, assuming I grant the  
4 motion -- again, I'd like to more (unintelligible)  
5 briefing on this specific question and the exact  
6 non-bankruptcy law at issue, and I'll decide it  
7 very quickly. But I'm not -- I was not  
8 anticipating, and I'm not prepared right now, to  
9 conclude that there's preemptive effect  
10 (unintelligible) over any applicable  
11 non-bankruptcy law, and I'm not sure there's a  
12 (unintelligible) dispute for me to decide that  
13 anyway.

14 MR. MAIZEL: Your Honor, given the fact  
15 that, I think, this is a hypothetical, I think  
16 your proposed resolution exactly is obviously okay  
17 with the debtor and it's the right answer. I  
18 mean, we don't have to do this in the abstract.

19 THE COURT: Thank you. And I've not seen  
20 anything in the order suggesting there was a  
21 (unintelligible) intended at this point. And  
22 again, I'm just not -- I don't think I need to  
23 resolve this right now. But we got interrupted.

24 Mr. Alberts, was describing kind of where  
25 you are with the 2020 (unintelligible).





1           MR. ALBERTS: Well, in fact, Your Honor,  
2     as to that last point, the addition of the  
3     language really got into the preemption. Our view  
4     would be to simply strike any reference to it,  
5     which brought it back to being neutral. And --  
6     and that was the original form of the order that  
7     was circulated yesterday and revised today up  
8     until the last draft. So we think there's a  
9     simple solution to that.

10           As to the balance, Your Honor, we've not  
11    received any comments to the form of the order  
12    from any other parties. Obviously those parties  
13    that were served with copies are on the phone.  
14    And if there are other concerns that they have, we  
15    are happy to try to address them now.

16           THE COURT: Thank you, Mr. Alberts. Is  
17    there anything else you'd like to say before I  
18    hand it over to the other parties?

19           MR. ALBERTS: No, other than, you know, if  
20    -- if I went on a little too long from our  
21    pleadings, my apologies. Again, I just was  
22    concerned that there may be people on the line who  
23    hadn't had a chance to read them and I wanted them  
24    to get the full thrust of everything we had said.

25           THE COURT: No. Thank you, Mr. Alberts.



1 I appreciate that. I think it's appropriate that  
2 it be very clear what's happening today and I  
3 appreciate the discussion. And I think you took  
4 an appropriate amount of time given the gravity of  
5 what's being proposed.

6 Mr. Sherman, I'll hear from you on behalf  
7 of the Committee.

8 MR. SHERMAN: Thank you, Your Honor. We  
9 have both substantive and procedural issues. And  
10 let me start with as (unintelligible) professional  
11 that does healthcare work across the country,  
12 there's never a good day when you're considering  
13 the closure of a hospital; there is no silver  
14 lining.

15 So when Mr. Alberts referred earlier to a  
16 silver lining there, there is none. This is a bad  
17 and somber day for the debtor, for the community,  
18 for its creditors. And this somber day has been  
19 magnified, you know, by the procedural due process  
20 issues I alluded to earlier in the call. And it  
21 is self-evident by the parties who are on this  
22 call such that there are no representatives of  
23 creditors, other than myself, as a fiduciary for  
24 all creditors, but individual creditors have not  
25 had an opportunity to participate. Employees have



1 not had an opportunity to participate. The --

2 (Crosstalk)

3 THE COURT: (Unintelligible). Lapis is a  
4 very large creditor, right? In the State and the  
5 (unintelligible). I mean, (unintelligible) no  
6 creditors looking estate. So to say, there's no  
7 creditor on the line is a remarkable  
8 overstatement; wouldn't you agree?

9 MR. SHERMAN: No, Your Honor. I think  
10 that Lapis is a secured creditor which has its  
11 collateral that it looks to. The State, I'm not  
12 aware of any claims it has. But there are  
13 thousands of creditors in this case, Your Honor,  
14 that haven't been provided notice.

15 THE COURT: And we discussed this in the  
16 chambers conference, but I'm happy to do it now on  
17 the record if you'd like. So what would you  
18 propose is that this court should have put, and  
19 the debtor should have put, (unintelligible)  
20 health and safety that says risk on a procedural  
21 issue; is that what you're saying to me?

22 MR. SHERMAN: Absolutely not, Your Honor.  
23 What -- what -- I think the process that was  
24 employed in the Verity case, 5- 600 miles down the  
25 road from Yakima, could have been employed here.



1           THE COURT: Well, they filed that motion  
2 Monday; isn't that correct? And that hearing was  
3 two days later, so I could have a hearing on  
4 Monday? Is that what you're telling me, sir?

5           MR. SHERMAN: No, Your Honor. That the  
6 papers could have been filed, the public could  
7 have been put on notice, so people could have  
8 participated in the hearing. That -- that's all  
9 I'm saying, Your Honor. Is that the concept that  
10 there was nothing on the docket and is nothing on  
11 the docket, and the fact that the creditors'  
12 committee, the members of the creditors'  
13 committee, could not participate in this hearing  
14 because they were prevented from getting the  
15 notice of it is -- those are the procedural due  
16 process concerns, is that the largest creditors in  
17 these cases were restricted in getting information  
18 regarding this hearing along with all other  
19 creditors.

20           So when Your Honor wants to have a  
21 complete record, I -- I don't know how that can be  
22 accomplished when stakeholders, unions, trade  
23 creditors, employees, have not had an opportunity  
24 to voice concerns. That's it, Your Honor. I'm  
25 not trying to remarkably overstate anything. I'm



1 just saying in comparison to the creditors out  
2 there and a short number of people on this call,  
3 there's a disproportional amount of people that  
4 have not had the opportunity to understand what's  
5 happening. That's it, Your Honor. And there are  
6 processes by which hospital and business closures  
7 happen. And that's covered by 363.

8 I think debtors' counsel made another bold  
9 statement when he said, "I'm not even sure it's  
10 covered by 363." Well, I'm not sure how often,  
11 from a horizontal or vertical test, of ordinary  
12 course of business, I would presume that this is  
13 the first time that this hospital has been closed.  
14 So, it is a 363. It's clearly outside of the  
15 ordinary course of business. It clearly requires  
16 court approval, and that court approval kicks in  
17 9014, which then provides notice to 2002. And  
18 what we have here is an abridged version of that.  
19 And the milk is spilled, unfortunately, because  
20 we're here and I'm doing it. And I just want the  
21 record to be clear that we, the Committee, as a  
22 representative of all general unsecured creditors,  
23 have made it known -- and history will look back  
24 on this transcript -- to reflect our objections  
25 to procedural due process.



1 I don't want to belabor the point, Your  
2 Honor. I respect what Your Honor said. But there  
3 are lots of people out there that wanted to be  
4 part of this process that were restricted from  
5 doing it. So, I don't know how to undo that. So,  
6 we're having a hearing, and then three days later,  
7 somebody from the union -- some trade vendor or  
8 some doctor wanted to say, "Wait a minute. How  
9 did this hospital get closed? Why did the Court  
10 do that? I had a concern of XYZ. That person  
11 cannot express that concern, just by operation of  
12 what happened.

13 And I understand Your Honor's statements  
14 on pacing health and safety, and we obviously  
15 respect that. But I'm just saying that there was  
16 precedence, and the precedence is real. Your  
17 Honor just found it, right? Your Honor just said,  
18 "In the Verity case, there was a notice put on the  
19 docket, the Court entered an order, and in 48  
20 hours you had a hearing."

21 MR. MAIZEL: You know, Your Honor -- this  
22 is Sam Maizel --

23 MR. SHERMAN: Mr. Maizel, Mr. Alberts had  
24 55 minutes to talk. I --

25 MR. MAIZEL: I just wanted to respond to



1     that point since I --

2             MR. SHERMAN:  It's disrespectful,  
3     Mr. Maizel.  Right now -- your side had a chance  
4     to speak.

5             Your Honor, I would only ask that we be  
6     afforded the same opportunity.

7             Mr. Sherman, why don't go ahead.

8             THE COURT:  Mr. Maizel, I'll let you  
9     respond to this later on.

10            And certainly, Mr. Sherman, I think you're  
11    better served moving to the substance of the  
12    motion.  And I'd be curious to hear whether your  
13    committee opposes it, because this is really what  
14    you seem to want when you just spent nearly two  
15    hours cross-examining Mr. Lane in December.  So,  
16    I'd love to hear your views on the substance of  
17    what's being proposed.

18            MR. SHERMAN:  Sure, Your Honor.  And I'm  
19    happy to move over to the substance of issues.

20            The substance of issues related to what  
21    Your Honor actually alluded to, which is how is  
22    this to be funded in compliance with 351, because  
23    we've looked at the budget.  And the budget, as  
24    constituted -- and Mr. Jarrick is here, obviously  
25    on behalf of Lapis, who's now our DIP lender -- I



1 don't see the debtors liquidity and line items  
2 that address closure issues. We've asked for  
3 closure plans on economics; we haven't seen  
4 anything. There was a statement by Mr. Gallagher,  
5 I heard earlier, that they have the money to do  
6 it; I don't know of that. I don't know what the  
7 debtors' estimates, for example, on medical  
8 records are. How are they going to hold the  
9 records? For what period of time? Just by  
10 saying, "I'm going to comply with 351," is  
11 different than they have the cash available to  
12 fund 351.

13 And Your Honor alluded to earlier, my two  
14 hours of cross-examination of Mr. Lane. And I  
15 refer you back to that when we talked about 506C  
16 issues, and the potential that the estate is short  
17 in funding expenses.

18 And, in our experience, Your Honor, the  
19 retention of medical records is an expensive  
20 proposition. I'd like to hear if the debtor has a  
21 quote as to how expensive that is, and a statement  
22 from Lapis that they're going to fund it. That  
23 would go a long way to addressing substantive  
24 issues raised as, if this facility is to be  
25 closed, how would the medical records be preserved





1 and how does the debtor have the cash to do it?

2 There is no updated budget, Your Honor.

3 There's nothing attached to the motion which shows  
4 how these costs -- A, what the costs are; B, how  
5 are the costs going to comply with the budget; and  
6 C, whether there's enough liquidity to match what  
7 is to be paid. So if the debtor can make that  
8 representation and tell us what the quotes are,  
9 and that they have the cash to pay, and if Lapis  
10 says they're going to fund enough to pay for the  
11 closure costs, that addresses the economic  
12 concerns relating to this motion, Your Honor.

13 So I could turn the podium back to  
14 Mr. Maizel, who, you know, obviously didn't mean  
15 to interrupt me when it came time to  
16 (unintelligible) showing how they're going to pay  
17 for this, but I'd like to hear from the debtor and  
18 his principles, how -- what are the costs of  
19 closure? How is it impacted by the budget? How  
20 do they have the liquidity with their DIP lender  
21 to do it? What discussions they've had with their  
22 DIP lender to pay for this? Because we're dealing  
23 with an estate here that we just went through  
24 hours of testimony dealing with thin liquidity.  
25 We need to understand -- I think the Court needs



1 to understand -- how this is to be paid for.

2 Thank you, Judge.

3 THE COURT: Thank you, Mr. Sherman.

4 And, Mr. Maizel, you don't need to respond  
5 to that right away. I just want to let everyone  
6 else go first and then the debtors can circle back  
7 at the end. I think Mr. Sherman is raising a fair  
8 issue about the cost; it was the same issue the  
9 Court touched on a little bit. So I think  
10 elaborating on that before we conclude the hearing  
11 would be appropriate. So please put that on the  
12 list of things to address.

13 Mr. Kannel, do you have anything you'd  
14 like to say today on behalf of UNB bank and Lapis,  
15 and I assume this is both (unintelligible) their  
16 pre-petition lender hat.

17 MR. KANNEL: This is (unintelligible)  
18 pre-petition hat, but it's deposition.  
19 Mr. Jarrick can confirm that with respect to their  
20 DIP hat, and our statement is we're not objecting  
21 to the release sought in the motion, and I think I  
22 can wrap it up there.

23 THE COURT: Thank you, Mr. Kannel.  
24 Brevity is always the soul of wit. I appreciate  
25 that.



1           Mr. Jarrick, I guess, do you have anything  
2   else to add wearing the DIP hat?

3           MR. JARRICK: Good afternoon, Your Honor.  
4   Other than to just state for the record that Lapis  
5   as a DIP lender is completely supportive of the  
6   closure and the closure process.

7           THE COURT: Thank you, Mr. Jarrick.

8           Mr. Dyer, on behalf of the US trustee?

9           MR. DYER: Thank you, Your Honor. I think  
10   we agree that this isn't an ordinary course  
11   transaction. This is something that needs the  
12   Court's approval. But the devil's in the details,  
13   and that's in the closure plan.

14           I think the Court's going to have to make  
15   some specific findings about notice and due  
16   process. Under the circumstances it's  
17   (unintelligible) on this case, especially as it  
18   relates to the regulatory agencies. I believe  
19   they do have some concerns they'll voice, too.

20           On the closure plan, there's nothing in  
21   the record that shows there is any kind of  
22   pre-motion consultation about the terms of the  
23   closure plan, and I think that's where the  
24   heartburn will come in. That's the devil in the  
25   details, not the actual overall granting of this



1 motion on closure. Because, economically, that's  
2 pretty plain from the record.

3 But the closure plan itself is not the  
4 same level of a decision it should close, the  
5 closure plan itself is the aspect of complying  
6 with applicable law and/or those things that they  
7 can do, perhaps, to minimize any non-compliance  
8 with applicable law. And the -- I think my  
9 suggestion that, in accordance with applicable  
10 non-bankruptcy law be added in paragraph two of  
11 the proposed order, precisely because there's both  
12 federal and state implications here, and  
13 (unintelligible) -- as the Court indicated -- as  
14 already read, that you have to offer, according to  
15 the requirements of (unintelligible) state. This  
16 is an operation that is now deciding to cease  
17 operations, and even (unintelligible) trustees,  
18 when they have an operating order, must comply  
19 with state law when they shut down after they have  
20 an operating order under 721.

21 The real problem on the course is that  
22 it's not clear, as the Court already noted, what  
23 house laws may or may not be overwritten by this  
24 order, and (unintelligible) be neutral on that, I  
25 understand that. And I also understand that there



1 may not actually be any conflict that has not been  
2 represented to the Court today. I hope that there  
3 will not be any conflict because my primary  
4 concern is not having that come back to this  
5 bankruptcy court to incur more costs and expenses  
6 over things that should be clarified in the  
7 closure plan today or pre-today.

8 I don't see a statue in conflict with  
9 state law as I understand it; I don't know that we  
10 have any other issues other than the 363(b) issue.

11 And this case is -- I mean, the argument  
12 today is that we have a case in joint  
13 administration. We have Astria Health as a  
14 holding company operating all of the general  
15 administration at its level with a breakout piece  
16 for these other, either wholly owned or  
17 affiliated, companies, and yet, the argument in  
18 the (unintelligible) is that, oh no, we had to  
19 stand alone (unintelligible). That practically  
20 makes no sense, and I think it is (unintelligible)  
21 959(b), but the Court is reserving that issue, to  
22 something in the future, that's fine. But there  
23 are maybe other provisions, other than the timing,  
24 that may be in conflict.

25 As I heard Mr. Maizel make his comment, it



1 was about the timing of the notice period that he  
2 was concerned, and the patient care aspects may  
3 indeed require more than seven days as it relates  
4 to any of the patients that have to be transferred  
5 or placed elsewhere. So the -- I'm sure that  
6 that's built in with some elasticity, but it's not  
7 mandated in the way that the order or the motion  
8 is written.

9 I also would like that to be clearly  
10 understood, that that really is an elastic period,  
11 as it requires patient's (unintelligible), and  
12 that if the notice side runs after the patient  
13 care issues are taken care of, that's something  
14 that can be brought to the Court if that actually  
15 has some monetary impact that needs to be dealt  
16 with.

17 That's the reason I want to be in  
18 accordance with the (unintelligible)  
19 non-bankruptcy law in there, is because if the  
20 notice issue is going to be reserved out for  
21 something else that's (unintelligible) the other  
22 matters have to be done in appropriate  
23 (unintelligible) and Mr. Maizel is promising to do  
24 that. But as long as everybody's clear, that's  
25 not a leverage point down the road that people get



1 to argue about. I don't want the cost coming back  
2 on the estate. Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Dyer. I  
4 appreciate your comments. As I indicated, and  
5 again, we'll put a finer point on this at the end  
6 of the hearing, but the Court is inclined to  
7 reserve on the pre (unintelligible) issue,  
8 including (unintelligible) maybe the entirely  
9 academic. You raised a fair point that I had not  
10 fully thought of that I'm -- I'm inclined, and I'm  
11 just looking at the most recent draft of the order  
12 that I have that grants authority to influence the  
13 plan. And I think adding some elasticity language  
14 to this paragraph, giving the debtors authority to  
15 modify the plan to the extent necessary to comply  
16 with the appropriate law or to the extent that  
17 they reasonably deem necessary to protect patient  
18 safety, would be appropriate. So that the closure  
19 plan, as it exists today, is a plan, but it's not  
20 shackling ourselves to that. And that the debtors  
21 can make modifications to that order precisely to  
22 avoid having to present a fight with a state  
23 agency, the (unintelligible). Or. Again, if it  
24 means the difference between something tragic  
25 happening or not. So I think that's a very good



1 idea. I'm sure the debtors won't oppose having  
2 that flexibility built-in and the Court's happy to  
3 add that to the order. So thank you, Mr. Dyer.

4 I'd like to hear from the patient  
5 Ombudsman, Ms. Goodman.

6 MS. GOODMAN: Good afternoon, Your Honor.

7 THE COURT: Before you start, I want to  
8 point out, I know -- I'm sure you feel that you've  
9 been put in a difficult situation given some of  
10 the statements made about the motion which I think  
11 relate to the debtors' construction of things that  
12 were said in the prior hearings.

13 As I said in December when this came out,  
14 I don't really want or think I need to get into  
15 the weave on the back and forth on that. So I  
16 think just registering that you strongly disagree  
17 with the debtors views about that is sufficient.

18 And I am going to take out, assuming I  
19 grant the motion today, I'm going to take out that  
20 entire paragraph out of the proposed order. That,  
21 along with some other things we'll talk about  
22 later, I don't think are necessary for me to make  
23 findings on.

24 So I just wanted to let you know, we don't  
25 need -- I'm sure I know what your position on this





1 is going to be and I appreciate it. And I'm not  
2 casting aspersions at all on anyone today. And  
3 I'm not making findings along the lines that were  
4 included in the draft order. So please don't  
5 focus on that. Please kind of focus on going  
6 forward, concerns you may have about patient  
7 safety, because I do think motions of these sorts  
8 are part of why Congress in 2005 created your  
9 position. So I'm very interested in what you have  
10 to say about all of that.

11 MS. GOODMAN: Thank you, Your Honor. That  
12 wasn't on my agenda, but I appreciate the  
13 (unintelligible) discussion.

14 Given the nature of how this has rolled  
15 out, I have not engaged in any specific  
16 discussions or granular discussions with director  
17 and leadership, who I think would be very  
18 important and instrumental in affecting a closure  
19 plan.

20 Certainly, the items in the motion are in  
21 outline form. But I think the State agency folks  
22 can speak to this better than I. But I think the  
23 actual plan would be far more detailed on the  
24 ground, granular to patient names, pair sources,  
25 needs, et cetera. And I think once you get



1 granular into that, we may find that there's a  
2 handful of inpatients that are more challenging to  
3 place.

4 The state agencies proactively reached out  
5 to me. I've had some conversations today. Those  
6 conversations probably, again, need to engage  
7 appropriate people on sight and -- and be able to  
8 sort of (unintelligible) that out to see. I think  
9 by large measure, seven days is probably doable,  
10 but even just (unintelligible) there's probably  
11 some number of patients, that will be difficult.

12 So I guess I'll leave it at that, unless  
13 you have specific questions. I do want to mention  
14 though, we're really focused on the inpatients.  
15 And the outpatient services that will close are  
16 also a concern to me in terms of either patient  
17 care vacuum or making sure there is some triaging  
18 of those patients. And I don't think I need to go  
19 to every specific example, but you've got people  
20 scheduled for outpatient cardiac services; you  
21 have people who have had open-heart surgery that  
22 are in a phase-two cardiac rehab program; you have  
23 people engaged in infusion services where they  
24 have critical infusion but they may come to the  
25 hospital to receive on an outpatient basis. And



1 I'm not sure I'm comfortable with just summarily  
2 saying that we're going to offer those services to  
3 them at Toppenish or Sunnyside because people may  
4 have various social determinants that make that  
5 unrealistic or unavailable to them, either for  
6 insurance reasons, transportation or otherwise.

7 So for my perspective, obviously there's a  
8 lot more detail and build-out needed. And those  
9 are sort of my high-level concerns, unless you've  
10 got -- oh, and one other mention is, because this  
11 has come up for me as an ombudsman, you also have  
12 workers who are patients. You know, again, I've  
13 actually run into this. They're seeking their  
14 healthcare as well and I'm not sure how this all  
15 plays into staff that may have things planned,  
16 that are losing their job and whether there is any  
17 protections or any -- but I think making sure that  
18 there's clear communication for those folks as  
19 well, because I would imagine they are also  
20 included in this mix either on an anticipated  
21 inpatient stay, a current stay, or outpatient  
22 services, as I've discussed.

23 THE COURT: Thank you Ms. Goodman. I  
24 appreciate it. I don't have any questions and I  
25 appreciate the concerns that you've raised. And I



1 do hope the debtors take a look at those on a more  
2 granular level, as you described.

3 I'll turn it to, I think Ms. Yunker, for  
4 the State of Washington. And I have to  
5 apologize if I'm not calling the correct people  
6 for the correct agencies. I'll let you go first  
7 and then anyone else speaking on behalf of state  
8 regulatory agencies, and then counsel for the City  
9 of Yakima, if she would like to say anything, and  
10 then I'll open it up more broadly if anyone else  
11 in line who would like to speak. But Ms. Yunker,  
12 please go ahead.

13 MS. YUNKER: Thank you, Your Honor.

14 First, let me put Mr. Maizel and  
15 Mr. Alberts at ease a bit. We're not dealing with  
16 the State of California here. Washington  
17 recognizes that a facility in financial distress  
18 is likely to struggle to maintain quality patient  
19 care. And the State will cooperate, in every way  
20 that it can, to assure a safe and efficient  
21 transition of patient care to other capable  
22 providers. In fact, it may be the case that in  
23 certain situations, the State can facilitate  
24 access to resources. It might even help in the  
25 safe in the (unintelligible) transition.



1           Now I'm not saying that's the case with  
2   respect to today's motion. I simply don't know  
3   that. But, struggling facilities will never know  
4   if a state can help if they proceed without timely  
5   approaching state regulators to consult on a plan  
6   before shutting their doors.

7           So patient well-being is first and  
8   foremost to the State and the State really is here  
9   to help. With that, I would like to yield my time  
10   to my colleagues. And I'm going to ask if we can  
11   hear from chief legal counsel for the Health Care  
12   Authority. She needs to leave. She's got a 3  
13   o'clock unavoidable appointment, and that would be  
14   Annette Schuffenhauer.

15           THE COURT: Yes. Ms. Schuffenhauer,  
16   please -- please go ahead. Certainly, if you have  
17   a scheduling conflict -- and I would like to hear  
18   from you today, so, please go ahead.

19           MS. SCHUFFENHAUER: Great. Thank you so  
20   much. Just for the record, my name is Annette,  
21   A-N-N-E-T-T-E, last name Schuffenhauer. Just  
22   because it's super long, I'm going to spell it for  
23   the record, S-C-H-U-F-F-E-N-H-A-U-E-R.

24           I am the Chief Legal Officer for  
25   Washington State Health Care Authority. I am an



1 attorney, but I am not the attorney of HCA.

2 Mrs. Iverson, who is on the phone, is our AAG.

3 I've worked with Washington State Medicaid  
4 Program since 2003. I know our patients well, and  
5 I know our practices well. Washington State  
6 Health Care Authority is the largest state-wide  
7 purchaser of healthcare services insuring one out  
8 of three non-Medicare recipients in the State of  
9 Washington and that continues to grow.

10 We're also the State's Behavioral Health  
11 Authority responsible for inpatient and outpatient  
12 services for clients for behavioral health needs,  
13 such as administration of the Involuntary  
14 Treatment Act in the State of Washington.

15 We've haven't been party to participate in  
16 designing or implementation of the transition plan  
17 or discharge plan -- just seeing that today for  
18 the first time -- and so we haven't been able to  
19 assess it. But we have been in this situation  
20 before. We've had to move some of our patients  
21 fast. And we have a great team of healthcare  
22 practitioners and nurses that work with all parts  
23 of the State to help when our patients need to  
24 move.

25 For instance -- well, just to add the



1 complexity here, we contract with five major  
2 managed care plans. Any number of these patients,  
3 that could be at this facility, might be enrolled  
4 in a managed care plan for which we would need to  
5 coordinate. So it gets kind of complex, but now  
6 that we're aware, we're on board.

7 We're not objecting to the time period.  
8 We just need very careful and close coordination  
9 with the ombudsman's office, as well the facility,  
10 and then we will be able to work with pulling  
11 together all the other partners that need to help  
12 for our patients without having any  
13 (unintelligible) at this time as to who's there  
14 and what the transition needs are going to be.  
15 Just as others have stated, it's hard to assess  
16 whether or not all patients will be successfully  
17 transferred within seven days, but we will work  
18 really hard with all that need to be worked with  
19 to try and make that happen.

20 THE COURT: Thank you, counsel. I  
21 appreciate the comments and certainly the  
22 resources that you can bring and your cooperation  
23 if this indeed goes forward.

24 Would anyone else on the line who is  
25 counsel for any agency or part of the State of



1 Washington like to address the Court?

2 MR. BUCKNALL: This is Jack Bucknall. I'm  
3 an Assistant Attorney General. I represent the  
4 Washington State Department of Health.  
5 Specifically, I represent the Department of  
6 Health's Hospital Licensing Program.

7 For just a little bit of context for the  
8 comments I'm going to make today, the Department  
9 of Health is an umbrella agency. And under that  
10 umbrella, there are lots of semi-independent  
11 boards and commissions that are also responsible  
12 for licensing healthcare providers, and then also  
13 healthcare facilities, one of which, the  
14 Washington State Pharmacy Commission, is  
15 implicated by this closure today.

16 In principle, the Department of Health  
17 does not oppose the motion to close the hospital,  
18 and in principle, does not oppose a rapid timeline  
19 to close the hospital based on the debtors  
20 representations that they are (unintelligible) or  
21 can no longer -- no longer have the resources to  
22 provide safe patient care.

23 The purpose of hospital licensing is to  
24 ensure that hospitals operate in a manner that  
25 ensures safe patient care. And based on the





1 representations debtors have made, it doesn't look  
2 like that's going to continue to be possible.  
3 But, so long as they're operating, our position is  
4 they have to operate in a manner that is  
5 consistent with the licensing requirements, and  
6 that includes ensuring that the hospital  
7 implements a discharge plan that ensures patient  
8 safety and appropriate transfer of care.

9           The patient care ombudsman, Ms. Goodwin,  
10 touched on this -- and we think this is a really  
11 important point to reinforce -- that so long as  
12 there's a patient in that hospital, the debtors  
13 are responsible for ensuring for the continued  
14 care and also for appropriate discharge planning  
15 and transfer.

16           And at this juncture, we don't know what  
17 patients are there. We don't know which patients  
18 might pose significant problems with discharge or  
19 transfer. And until the execution of the plan  
20 occurs, it's really impossible to know if the  
21 timeline proposed is reasonable or not, or if it  
22 would be consistent with the State licensing  
23 requirements for discharge planning.

24           One other item I'd like to bring up is  
25 that we want to be sure -- and there's a specific



1 statute in Washington law that requires medical  
2 records be safeguarded and stored. I think it  
3 should be interpreted in a manner that's  
4 consistent with HIPAA, which also requires that  
5 patients have access to their healthcare  
6 information. As part of this plan, we would like  
7 to see that the Court ensure that not only  
8 subsequent physicians receive notice about how to  
9 access patient records, but that patients  
10 themselves receive notice about where they can  
11 request their records once the facility closes.

12 And to close, I would just like to point  
13 out that there are at least two regulations, that  
14 I can think of, that are in conflict with the  
15 closure plan that the debtors have outlined,  
16 although I heard the Court say that we probably  
17 wouldn't be shackled with strict timeline. But  
18 first, this hospital has a pharmacy, it has a  
19 licensed pharmacy within that. And there's a  
20 state regulation that requires a minimum of 15  
21 days' notice to the Pharmacy Commission before the  
22 pharmacy closes. Based on the motion, I  
23 understand closing the hospital pharmacy will be  
24 part of the closure plan. And the plan, as  
25 proposed, will not satisfy that regulation. For



1 the record, that regulation is WAC 246-869-250.

2 Another role that the Department of Health  
3 plays is that it serves as a state-designated  
4 inspection agency for the federal Department of  
5 Health and Human Services. So it inspects  
6 hospitals on behalf of CMS. I believe CMS is  
7 represented on the line and I'll let them speak to  
8 this further. But my understanding, and it's the  
9 State's understanding, that a hospital has to  
10 provide at least 15 days' notice to CMS of  
11 hospital closure of a CMS-certified hospital. And  
12 so their notification -- their closure plan did  
13 not meet the requirements in the federal CFRs.

14 Unless there are any questions, I don't  
15 have anything else. Thank you very much.

16 THE COURT: Thank you, counsel. Again, I  
17 don't think the Court needs to decide any of the  
18 specific (unintelligible) issues today and I  
19 certainly encourage avoiding them to the extent  
20 possible. I would note that the (unintelligible)  
21 order submitted by the debtors expressly  
22 contemplates that cessation of operations at the  
23 medical center will be done in coordination with  
24 the Department of Health. So I think the debtors  
25 are already anticipating a substantial



1 coordination with you or with your department.

2 Just briefly, regarding the patient record  
3 point again, I don't know that this is right  
4 today, but Section 351 does outline a set of  
5 requirements that would apply in contrast to any  
6 otherwise applicable federal and state law if the  
7 debtor in possession doesn't have sufficient  
8 amounts of funds to pay to the storage of patient  
9 records in the manner required by applicable  
10 non-bankruptcy laws. So although there's not a  
11 general preemptive provision, I do think -- and  
12 again, I don't know that need to decide this  
13 today, but I would observe that Section 351 is a  
14 provision of the bankruptcy code that expressly  
15 negates otherwise applicable federal or state law.

16 So that's just worth everyone keeping in  
17 mind in the event this becomes germane down the  
18 road.

19 Why don't I hear from counsel for CMS?

20 MS. YUNKER: Your Honor, this is  
21 Dina Yunker. We also have representatives -- two  
22 representatives from the Customer Protection  
23 Division, but that's not necessarily with respect  
24 to patient care. So I'm sorry to interrupt. I  
25 think it's appropriate to go further with CMS.



1 (Crosstalk)

2 THE COURT: Please go ahead.

3 MR. DONOVAN: Good afternoon, Your Honor.

4 This is Brian Donovan from the US Attorney's  
5 Office appearing on behalf of CMS. And there's  
6 also Aaron Brown from HHS on the line, as well.  
7 He can also answer some questions if you have any.

8 (Crosstalk).

9 MR. BROWN: Good afternoon, Your Honor.

10 MR. DONOVAN: In regards to CMS's position  
11 on this, I think we've -- a couple of the  
12 statements have already acknowledged kind of where  
13 we are.

14 Mr. Dyer acknowledged the  
15 devil-in-the-details, I think, in terms of patient  
16 records. And I know there's the bankruptcy  
17 statute that applies to that. I think CMS was a  
18 little bit concerned that there's not at least an  
19 acknowledgment in the closure plan, about the  
20 federal regulations that apply to patient records  
21 keeping and HIPPA requirements. And I think we  
22 would like to see a little bit more detail in the  
23 closure plan in regards to that on that point.

24 The larger concern, I think we have, is --  
25 and it was just referenced -- is the Federal 42



1 CFR 489.52, termination by the provider, requires  
2 a provider who operates within CMS to provide 15  
3 days' notice to the public before closure.

4 The timeline for the closure plan clearly  
5 does not allow for that type of notice to the  
6 public. And it also requires notice to CMS not  
7 less than 15 days before closure. And again, this  
8 timeline that's contemplated in the closure plan  
9 is a seven-day closure plan. So I know that Your  
10 Honor doesn't want to address the preemption  
11 issue, but I think is a bit of conflict between  
12 the federal regulations that govern CMS, and  
13 notice of termination, and what the closure plan  
14 contemplates.

15 THE COURT: Counsel, can I ask you about  
16 that regulation? Is that just categorical without  
17 exception? So if there's an earthquake or a  
18 meteor or a tsunami, you can't close a hospital?

19 MR. DONOVAN: Well, the regulation itself  
20 doesn't seem to contemplate any sort of exigent  
21 circumstances like that. It says the provider  
22 must give notice to the public at least 15 days  
23 before the effective date of termination, must  
24 specify the termination date, and explain the  
25 extent of services.



1           In terms of termination notice to CMS  
2   itself, it's actually a six-month termination  
3   timeline. But it says CMS may accept a  
4   termination date less than six months if it  
5   determines that to do so would not unduly disrupt  
6   services to the community or otherwise interfere  
7   with the effective administration of Medicare  
8   program.

9           We don't necessarily have that finding,  
10   but we understand that there is a tight timeline  
11   here. So, you know, CMS could accept a closure or  
12   termination notice of less than six months under  
13   the regulation. But the public notice requirement  
14   under the regulation seems pretty firm on the 15  
15   days.

16           THE COURT: I mean it would just be  
17   surprising to the Court if that's categorical  
18   without exception, because even things like the  
19   Warren Act relating to (unintelligible) employees  
20   certainly has exception for liquidating  
21   businesses, and I -- I just don't know how that  
22   regulation could be so ironclad. You know, if a  
23   natural disaster strikes or a cyber-attack  
24   strikes, or even just a bank sweeps all of the  
25   cash so that the hospital has no cash, that



1     there's this rigid, unyielding, 15-day notice  
2     period, I'm surprised that that's the law.

3             Again, I don't know that I need to decide  
4     this today, but it would be surprising to the  
5     Court if that's -- and I don't understand how,  
6     just as a matter of logic, there could be such a  
7     requirement given the world in which we live in,  
8     which severe events happen and people need to act  
9     quickly because of exigent circumstances.

10            MR. DONOVAN: I understand, Your Honor.  
11     But I'm not sure that the debtors have made the  
12     showing of a exigent circumstance to the extent of  
13     an earthquake or a cyber attack or something.

14            There's clearly a financial circumstance  
15     here, but I don't -- I'm not familiar enough with  
16     the filings in this case to show that there's such  
17     an exigent circumstance that the 15-day notice  
18     couldn't be incorporated in this closure plan.  
19     We're talking about an additional eight days of --  
20     as they work through this plan.

21            So I don't know if they've made that type  
22     of finding or showing.

23            THE COURT: Okay. Well, in the event that  
24     the Court grants the motion, as I said, I'm  
25     inclined to build some elasticity into to it so





1     that you can continue to discuss this with the  
2     debtors. And if it needs to come back to the  
3     Court for a finding about whether this is -- you  
4     know, is as severe as say a cyber attack would be,  
5     we can have that hearing. So I was -- I was just  
6     curious because I'm not familiar with this  
7     regulation, but I'd be a little surprised if  
8     either regulatory guidance or (unintelligible) on  
9     interpreting it hasn't built some plan to  
10    (unintelligible). But thank you for pointing that  
11    out.

12           Now, I encourage you to discuss this  
13    further with the debtors' counsel.

14           MR. DONOVAN: Thank you, Your Honor. I  
15    don't believe that I have anything further on this  
16    point, unless Mr. Brown has anything from CMS.

17           MR. BROWN: Nothing further.

18           THE COURT: Okay. Thank you, both.

19           Ms. Yunker, I think you have indicated  
20    that there's folks from the Consumer Protection  
21    Department (unintelligible) who'd like to speak,  
22    so if they can please go ahead next.

23           MS. UDAHSEN: Your honor, this  
24    Audrey Udashen. I'm an Assistant Attorney General  
25    in the Consumer Protection Division. The Attorney



1 General's Office oversees the dissolution of  
2 nonprofit corporations pursuant to RCW 24.03, of  
3 which the debtor is one. We mostly want to make  
4 sure that everyone on the call recognizes that the  
5 debtor is subject to RCW 24.03. And although, you  
6 know, unlike California, there isn't a requirement  
7 that we be given notice of the closure of the  
8 hospital, there is a requirement that we be given  
9 a proposed plan for the distribution of the  
10 debtors assets upon the dissolution of the  
11 nonprofit. And there's a 20-day notice  
12 requirement, and I just want to make sure that  
13 debtors' counsel is aware of that, and that, you  
14 know, the plan doesn't preempt that requirement.

15 THE COURT: Thank you, counsel. And just  
16 to elaborate on what you're saying, because you're  
17 touching on important bankruptcy issues, the Court  
18 is not authorizing, in connection with the closure  
19 plan, the disposition of assets or the winding up  
20 of the entity. That would need to be done -- I'm  
21 not going to say with 100 percent certainty  
22 pursuant to a plan, but that is the sort of thing  
23 that normally would be effectuated pursuant to a  
24 Chapter 11 plan. And the Court's constrained by  
25 the Supreme Court's (unintelligible) decision in



1 terms of what could be authorized outside of a  
2 plan. So Mr. Maizel and Mr. Alberts can address  
3 this when they come back at the end. But I don't  
4 understand the debtors to be proposing anything  
5 specific to the disposition of the assets to their  
6 winding up of the legal entity. And the Court's  
7 view is not that I'd be approving that today. I  
8 think that, very likely, would need to be done  
9 pursuant -- and probably in this case -- will be  
10 done pursuant to a Chapter 11 plan. And I think  
11 they certainly should give you notice pursuant to  
12 the bankruptcy rules. That would be a longer  
13 notice period than applicable notice period you  
14 mentioned. But thank you for comments.

15 MS. UDAHSEN: Thank you, Your Honor.

16 THE COURT: Anyone else from the State of  
17 Washington or the federal government who'd like to  
18 address the Court?

19 All right, counsel for the City of Yakima,  
20 if you would like to address the Court today.

21 MS. WATKINS: Thank you, Your Honor. Just  
22 quickly, I think that the main point that the City  
23 of Yakima would like to say is that we're  
24 concerned about the strain on resources. And we  
25 would like to stay informed more closely with the



1 closure to ensure that our public safety agencies  
2 have the right information at the time that they  
3 need it, so that the police department, fire  
4 department, our ambulance services, have a really  
5 good understanding of what's going on and what  
6 services are being offered, when.

7 And if we could do that in a coordinated  
8 manner, and the City could be kept in the loop  
9 about those emergency services really  
10 specifically, that would be helpful. Although I  
11 don't represent the county or the sheriff's  
12 department or the fire district, I think that they  
13 would also want that information as soon as  
14 possible, because they will be re-routing people,  
15 when they pick them up, to the only other hospital  
16 that's located within the City. Thank you.

17 THE COURT: Thank you, counsel. I think  
18 that those are fair concerns. And much of that is  
19 encompassed within the debtors closure plan, but I  
20 certainly hope that they go above and beyond with  
21 the -- a very physically large space within the  
22 City of Yakima, but it's also certainly, within  
23 the City and the County, a geographically large  
24 place. And as someone who works down the street  
25 from us, from the hospital, and I would certainly,



1 if there were an emergency, want the emergency  
2 responders to know where to take me if that were  
3 to happen. So I, on a personal level, appreciate  
4 your concerns and I do hope the debtors interface  
5 very closely with the City and County officials.  
6 So, thank you, counsel.

7 MS. WATKINS: Thank you. And I have to --  
8 I have another meeting, but thank you for allowing  
9 the City to be a part of this hearing.

10 THE COURT: Of course. I appreciate your  
11 participation today. Thank you. Thank you for  
12 joining.

13 MR. MAIZEL: Thank you.

14 THE COURT: Would anyone else on the phone  
15 like to be heard about anything else pertaining to  
16 the debtors motion before I hand the microphone  
17 back to debtors' counsel? Okay. Hearing no one,  
18 Mr. Alberts, will --

19 MR. MAIZEL: Your Honor, it's Sam Maizel  
20 and I'll finish up for us.

21 With regard to, and I'll take these in no  
22 particular order -- with regard to Mr. Dyer's  
23 comments about the timeline, the first concern is  
24 patient safety and smooth transition for the  
25 patients. So, in the motion itself, at page 15,



1 lines 6 and 7, it specifically says -- with regard  
2 to the timeline for the closure plan, it  
3 specifically says although we give you the general  
4 timeline, but we say it is subject to modification  
5 based on patient safety concerns and input from  
6 the Department of Health and others. And then  
7 there's a footnote that says all dates are subject  
8 to ongoing discussions with the Department of  
9 Health and others as appropriate.

10 So obviously, I mean with patient care in  
11 mind, we're going to modify the timelines as we  
12 need. That sort of relates to one of the comments  
13 made by the patient care ombudsman, you know, with  
14 regards to inpatient, the average length of stay  
15 is about four days. So within four days, in the  
16 ordinary course of business, most inpatients will  
17 have transferred out on their own.

18 With regards to those patients that are  
19 difficult to transfer, you know, I wrote down on  
20 my notes when the attorneys for the State were  
21 speaking, I wrote down, "Thank you for not being  
22 California." I confess most of my hospital cases  
23 are in California. And I -- this has been a  
24 pleasure to listen to the lawyers for the  
25 governmental representatives speak because it is



1     remarkably different from what I'm used to  
2     hearing. We will work carefully with them. We  
3     will make sure we coordinate with them, take their  
4     advice and we want this to be as smooth as  
5     possible for the patients and the community. And  
6     I appreciate that -- all the comments they made  
7     which I thought were tremendously helpful.

8             With regard to outpatients, there  
9     obviously is another significant hospital in town  
10    which can provide services and has capacity. We  
11    will coordinate with them, we have already.  
12    Yesterday there were meetings with the --  
13    organized by the Department of Health with  
14    healthcare entities, including us and Virginia  
15    Mason to make sure that this is a (unintelligible)  
16    handoff for the out-patients and the in-patients.

17            So, with regard to the notice days, I mean  
18    this is where the issue comes up, Your Honor, and  
19    this is where the discussion we had about  
20    preemption application of 28 USC 959(b). Let's --  
21    I think tabling it and hopefully we'll be able to  
22    resolve these issues, I thought comments the Court  
23    made with regard to the 15 days, for example, that  
24    CMS regulations required, this is always the  
25    issue. These regulations are written, these



1 specific numbers of days presume that it's  
2 ordinary course of business and everyone has the  
3 resources and the ability to keep operating for  
4 some period of time. Unfortunately, either an  
5 emergency, because of something like an earthquake  
6 or natural disaster, or in the event that an  
7 entity runs out of money or has no money to  
8 operate, and those days become more difficult.  
9 Hopefully, we'll be able to work with CMS and the  
10 Pharmacy Board to the extent that they actually  
11 believe the notice requires us to not have a  
12 cessation of operations as opposed to just giving  
13 15 days' notice. But hopefully we can resolve  
14 that and not have to come back to you for that.

15 With regard to the questions about patient  
16 records, we have made provisions and so we have,  
17 at no additional cost to the debtor -- and this  
18 partially responds to Mr. Sherman's comments -- no  
19 additional cost of the debtor. We've outsourced  
20 third-party paper medical record retrieval at no  
21 cost to the patients. And further, we have  
22 electronic records that will be available at no  
23 additional cost for electronic medical records.  
24 And the entity still survives and is operating and  
25 we'll make sure that we transition the medical





1 records in accordance with the State law  
2 obligations. And to the extent we need to store  
3 them beyond a year, we can just -- we'll take  
4 advantage of the bankruptcy codes, section 351, to  
5 dispose of them in accordance with the bankruptcy  
6 code.

7 So, we have given a lot to patient  
8 records. We obviously do not want any patients --  
9 I mean part of maintaining quality patient care is  
10 making sure that they have access to their  
11 records, whether with us or with the next  
12 provider. So, we are concerned about it. We are  
13 trying to make sure that we deal with it and will  
14 continue to do so.

15 The -- I think that is everything except  
16 for the committee's concerns about financing so --  
17 oh, no. You know, to respond to the Verity  
18 comparison -- so, unfortunately, this is not a  
19 good day in my practice after only closing one  
20 other hospital in 20-plus years, I get to close  
21 two today. So Mr. Sherman is absolutely correct.  
22 We did not file the motion to close St. Vincent  
23 Medical Center in Los Angeles under seal. We did  
24 file it Monday morning. We had a hearing this  
25 morning. And what I can say, Your Honor, is that



1     that shows that the decision to seal these, this  
2     particular motion, was not based on some arbitrary  
3     or rote application of that. It was based on a  
4     careful consideration by management, both the  
5     chief restructuring officer, the CEO, and me --  
6     based on my experiences -- and our concern for the  
7     maintenance of patient care in our facility until  
8     we can properly transfer those patients to other  
9     facilities.

10           And so yes, it was different here. The  
11     situation is remarkably different in Los Angeles  
12     within the primary service area of this particular  
13     hospital that we were closing. There are six  
14     other full hospitals. And within the secondary,  
15     there are a total of -- including the six, there  
16     are 17 other hospitals. Obviously that situation  
17     does not exist in Yakima and that's why we  
18     tailored the relief sought and how we proceeded to  
19     the circumstances.

20           With regard to the financing issues, so  
21     the -- right now the Yakima facility loses  
22     somewhere around \$2.5 to 2.8 million in  
23     (unintelligible) each month. We will immediately  
24     be able to cease that.

25           Sunnyside generates probably \$20 million a



1 year in profits after (unintelligible). We  
2 believe that we'll be able to grow that after  
3 closing Yakima. We believe -- and we have  
4 obviously provided budgets to interested parties.  
5 I believe that financial advisors to the Committee  
6 have also been access to the post-closure budgets.  
7 So I'm not sure where the disconnect is, but we're  
8 obviously -- made this decision because we  
9 believe, having looked at the numbers, that the  
10 cost of closing will be more than made up by the  
11 savings from the closing and maintain the  
12 viability of the remaining facilities, and it's  
13 better for the creditors over the long run.

14 Our secured creditors agree. I don't  
15 believe the unsecured creditors disagree. But  
16 obviously we'll sit down, to the extent there are  
17 continuing questions, we continue to share our  
18 budget with the financial advisors to the  
19 Committee and committee counsel and will do so,  
20 and will continue to answer their questions to the  
21 best of our ability about the financial viability  
22 of the debtor and cash flows and other issues.

23 THE COURT: Thank you, Mr. Maizel. That's  
24 helpful.

25 MR. MAIZEL: I'm sorry, Your Honor. One



1 other thing I forgot. Yakima has about \$30  
2 million of collectible AR, which, now that it's  
3 not having -- that collectible AR, will not have  
4 to be used to subsidize the operations. Obviously  
5 that's part of the equation as well.

6 THE COURT: Thank you Mr. Maizel, that's  
7 helpful.

8 Would anyone like to -- and not in a  
9 serial back and forth -- but if anyone would like  
10 to briefly address the Court before I take just a  
11 couple minute break to collect my thoughts and  
12 then rule, now would be the perfect time to do  
13 that. So if anyone has anything that's been  
14 missed and not thoroughly addressed?

15 (Silence)

16 THE COURT: Okay. I'm going to take just  
17 a couple minutes to compose myself. Everyone  
18 should stay on the line and the Court will come  
19 back and issue a ruling on this motion. So  
20 everyone just hang tight for a few minutes.

21 (Silence)

22 THE COURT: All right. Is everyone still  
23 there? Mr. Maizel, still there?

24 MR. MAIZEL: Yes, Your Honor.

25 THE COURT: Okay. The Court's prepared to



1 rule on -- issue it's ruling on -- on the motion.

2 So before the Court today is the debtors'  
3 emergency motion to authorize closure of medical  
4 center. It was filed by the debtors on Artria  
5 Healthcare case on Friday, January 3rd. That's  
6 docket number 867. The motion was initially  
7 sealed, but the Court, today, will be denying the  
8 motion to seal and ordering that the seal be  
9 removed so that the entirety of that motion and  
10 the supporting declaration will be publicly  
11 accessible on the docket.

12 The Court has heard this matter on an  
13 emergency basis. First, because that's typical  
14 practice in cases closing hospitals. Second,  
15 given the exigencies of the circumstances here  
16 including, among others, the over-arching need to  
17 protect patient health and safety, which the Court  
18 believes to be paramount here.

19 The following constitutes the Court's  
20 ruling on the motion:

21 This is a difficult day and a difficult  
22 matter before the Court. The Court's carefully  
23 considered the record before us and statements of  
24 everyone who spoke today. It's important to be  
25 clear up front what the Court's role is here. The



1 role of the Court is not to order what I think  
2 should be done or to make a decision working off  
3 of a blank slate. Rather, the Court reviews the  
4 decision that the debtors have made using what is  
5 known as the business judgement rule. Under the  
6 business judgement rule, the Court assesses the  
7 situation and decides whether the debtors have  
8 made a reasonable business decision. If the  
9 decision is a reasonable one, then the Court  
10 should grant the motion, even if the Court might  
11 make a different decision or want to do something  
12 else. Here, the Court has concluded that the  
13 debtors undoubtedly, reluctantly, and after  
14 careful deliberation by their board, management,  
15 and professionals, have made a reasonable business  
16 decision in concluding that the Astria Regional  
17 Medical Center should be closed. As such, the  
18 Court will enter an order authorizing the debtors  
19 to implement a closure plan as described on the  
20 record today.

21 This is an unfortunate, but inevitable  
22 outcome. No person or entity can continue to  
23 operate at significant losses forever. Absent an  
24 extremely wealthy benefactor, a business  
25 eventually needs to turn a profit or obtain fresh



1 capital from lenders or equity investors. Here,  
2 the Court is convinced that the debtors have tried  
3 their best to find a benefactor, lender, or buyer  
4 who would continue to operate the Astria Regional  
5 Medical Center despite its ongoing losses, but  
6 have been unable to do so.

7 The Court also believes the debtors are  
8 trying to avoid an even worse outcome. If Astria  
9 Regional Medical Center continues to operate at a  
10 loss, it risks bringing down the entire system,  
11 such that Yakima County would lose three hospitals  
12 and all of the clinics that the debtors operate.

13 Today's decision may ultimately advance  
14 the greater good by giving other aspects of the  
15 debtors business a fighting chance to survive that  
16 they would not have if the Astria Regional Medical  
17 Center continued to operate. A hospital cannot be  
18 (unintelligible) or operated without insuring that  
19 there's money available to pay for all the  
20 associated expenses such as employees, supplies,  
21 linens, food, and many other things.

22 This court agrees with the statements made  
23 by the bankruptcy court and the Gardens Regional  
24 Hospital case that the debtors (unintelligible)  
25 and now I quote, "To seek closure of the hospital



1 was entirely consisting with fiduciary duties in  
2 (unintelligible) under state laws to uphold the  
3 hospital's mission of sustaining public health and  
4 welfare. Public health and safety would be  
5 jeopardized if the debtors continued to admit new  
6 patients when they lack funds to adequately  
7 sustain operations.

8 In fact, through the courts of the board,  
9 I'll say the debtors would be acting in violation  
10 of their fiduciary duties to the community if they  
11 attempted to continue to operate the hospital  
12 despite the lack of sufficient cash to sustain  
13 operations." That last point bears emphasis. If  
14 Astria Regional Medical Center's not viable and  
15 doomed to fail at some point, it would be  
16 extremely problematic and imprudent for the  
17 debtors to continue to keep it open. And there is  
18 no (unintelligible) that anyone has identified  
19 under which Astria Regional Medical Center, at  
20 some point, does not have to close.

21 The Court is acutely aware and mindful of  
22 the impact of the debtors decision to close this  
23 hospital will have on the community. Yakima is a  
24 relatively small city and this hospital's been a  
25 significant employer, caregiver, and economic





1 participant in the local economy. Closing the  
2 hospital will have implications for various  
3 parties including nurses, doctors, patients, and  
4 vendors. Unfortunately, there really is no best  
5 alternative to that outcome. The Court sincerely  
6 wishes the debtors had other options available,  
7 but the hospital has been suffering a series of  
8 adverse events and has been unable to recover  
9 despite the debtors' best efforts during this  
10 bankruptcy case. There is little this court can  
11 do to fix this situation. Although I can grant  
12 for denial or request for relief, I do not have  
13 access to a printing press or anything else that  
14 could fix this unfortunate situation. The Court's  
15 primary and overriding concern in this context is  
16 patient safety and, to the extent possible, the  
17 avoidance of unnecessary burden to the debtors'  
18 rank and file employees.

19 The Court believes that care has been  
20 taken to (unintelligible) these concerns to the  
21 maximum degree possible under the circumstances.  
22 I believe the debtors understand and appreciate  
23 the consequences their decision to close this  
24 hospital will have for various stakeholders and  
25 community members, and I also believe they're



1     trying to minimize the severities of consequences.

2             The Court is also mindful of the fact that  
3     the debtors operate two other hospitals in  
4     Sunnyside and Toppenish, which have their own  
5     patients and are in communities without other  
6     hospitals, unlike Yakima. Continued subsidization  
7     of losses of Yakima hospital by the Sunnyside and  
8     Toppenish hospitals poses a risk to patient care  
9     and the general viability of those two hospitals.

10            Although the Yakima hospital will be  
11    closed by the debtors, the other two hospitals and  
12    numerous clinics remain open right now, which is  
13    in the best interest of the bankruptcy estates as  
14    well as the patients, employees, and communities  
15    served by those other components of the debtors'  
16    overall medical operation.

17            To be clear, I am authorizing the closure  
18    decision that the debtors have made after careful  
19    analysis of all available options, but I am not  
20    today authorizing the debtors to do anything that  
21    would violate any applicable law, rules or  
22    regulation. The debtors anticipate working  
23    closely with the Washington Department of Health  
24    and other regulatory bodies throughout this  
25    process. And the Court fully expects them to do



1 so in a cooperative and collaborative fashion.  
2 The Court also expects that the debtors will keep  
3 the patient care ombudsman involved in every step  
4 of the way.

5 As I said earlier today, circumstances  
6 such as these are precisely why Congress created  
7 that position in 2005.

8 Ultimately, it is with a heavy heart that  
9 I grant this motion. I wish this did not have to  
10 happen. I'm sure everyone associated with the  
11 debtors and other parties wishes the same thing.  
12 No one wants to see a hospital close, particularly  
13 one in a smaller community such as Yakima.  
14 Unfortunately, the debtors do not really have --  
15 do not have any real choice at this point. And  
16 they have made a reasonable and appropriate  
17 decision to close this hospital while giving due  
18 rate to the protection of patients and employees.  
19 Accordingly, the Court will enter an order  
20 granting the motion.

21 The Court has before it a form of order  
22 that counsel has provided to the Court, which the  
23 Court is going to revise. I don't need another  
24 (unintelligible) form of order, we'll work off the  
25 last version. The Court has some cleanup changes



1 and edits.

2           The Court is not prepared to include  
3 several of the factual findings that the debtors  
4 included in their proposed form. The Court will  
5 strike the third (unintelligible) paragraph  
6 regarding the debtors seeking (unintelligible)  
7 financing, which I don't believe I need to make a  
8 finding on today, although I'm not disputing the  
9 debtors' representation that this has occurred.  
10 The Court is going to strike the paragraph about  
11 recent comments and opinions at the status  
12 conference. I don't think that's necessary and  
13 I'm not prepared to make factual findings about  
14 that today. The Court's also going to strike the  
15 paragraph about the Washington Department of  
16 Health issuing a ruling on December 2, 2019,  
17 because, again, I don't think that's essential to  
18 the order. And again, the Court will have some  
19 other drafting stylistic changes.

20           I think the ultimate factual finding  
21 that's contained in the proposed form of order,  
22 and the one is essential and the one that the  
23 Court is making today, is that the debtors have  
24 exercised a sound, reasonable business judgment to  
25 determine that ceasing operations at and closing



1 the medical center, is the right decision.

2 And again, the Court doesn't even need to  
3 decide if that's the right decision that the Court  
4 would make on a blank slate. It simply needs to  
5 decide and is deciding that that's a reasonable  
6 decision to make in the exercises of the debtors  
7 business judgment.

8 The Court sincerely hopes that this  
9 closure process can be managed in an efficient and  
10 professional way that minimizes the disruption  
11 this turn of events will undoubtedly and  
12 unfortunately have on many individuals and this  
13 community as a whole. But, again, there really is  
14 no choice, and I'm approving the debtors decision  
15 today. The Court will enter an order this  
16 afternoon. And with that, we're adjourned. Thank  
17 you, everyone.

18 MR. MAIZEL: Thank you, Your Honor.

19 UNIDENTIFIED SPEAKER: Thank you, Your  
20 Honor.

21 (Whereupon, the hearing adjourned)  
22  
23  
24  
25



## 1 CERTIFICATION

2  
3 I, Andie Evered, do here by declare  
4 under penalty of perjury under the laws of the  
5 State of Washington that the following is true  
6 and correct:

7 1. That I am an authorized  
8 transcriptionist;

9 2. This transcript is a true and correct  
10 record of the proceedings to the best of my  
11 ability.

12 3. I am in no way related to or employed  
13 by any party in this matter; and

14 4. I have no financial interest in the  
15 litigation.  
16  
17

18 Dated in Bend, Oregon, this 2nd day of  
19 March, 2020.  
20

21   
22

23 Andie Evered, CCR

24 State of Washington CCR #2393  
25



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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In Re: )  
ASTRIA HEALTH ) No. 2019-01189  
\_\_\_\_\_)

VERBATIM TRANSCRIPTION OF PROCEEDINGS  
RECORDING OF AUDIO FILE

Tuesday, January 14, 2020

TAKEN BEFORE THE HONORABLE WHITMAN HOLT



TRANSCRIBED BY: RACHAEL L. HALL, CCR 3265

1 THE CLERK: All rise. The Honorable Whitman Holt  
2 presiding.

3 MR. MAIZEL: Morning, Your Honor, pleased to meet  
4 you.

5 THE COURT: Appearances, please.

6 THE CLERK: This is the time set in the matter of  
7 the Washington State Nurses Association, emergency  
8 motion for reconsideration in the matter of  
9 Astria Health, Case No. 19-01189.

10 Present we have Sam Maizel for the debtor.

11 THE COURT: Mr. Maizel.

12 THE CLERK: James Day for the debtor.

13 MR. DAY: Good morning, Your Honor.

14 THE CLERK: Carrie Staham (phonetic) for Washington  
15 State Nurses Association.

16 THE COURT: Morning.

17 THE CLERK: Darin Dalmat for Washington State  
18 Nurses Association.

19 THE COURT: Morning.

20 Is there anyone else on the phone who is formally  
21 to appear?

22 THE CLERK: And on the phone we have Jeffrey Miller  
23 for the debtor.

24 MR. MILLER: Good morning, Your Honor.

25 THE CLERK: Sarah Schrag for the debtor.





1 MS. SCHRAG: Good morning, Your Honor.

2 THE CLERK: Gary Dyer, attorney for the US Trustee.

3 MR. DYER: Good morning, Your Honor.

4 THE CLERK: William Kannel for UMB Bank and  
5 Lapis Advisers.

6 MR. KANNEL: Good morning, Your Honor.

7 THE CLERK: Dina Yunker for the state of  
8 Washington.

9 MS. YUNKER: Good morning, Your Honor.

10 THE CLERK: Andrew Sherman for the unsecured  
11 creditors committee.

12 MR. SHERMAN: Morning, Your Honor.

13 THE CLERK: Boris Mankovetskiy for the unsecured  
14 creditors committee.

15 MR. MANKOVETSKIY: Morning, Your Honor.

16 THE CLERK: Jane Pearson for the unsecured  
17 creditors committee.

18 MS. PEARSON: Good morning, Your Honor.

19 THE CLERK: Ryan Jarrett (phonetic) for Lapis  
20 Advisers.

21 MR. JARRETT: Good morning, Your Honor.

22 THE CLERK: And David Leigh for Med One Capital  
23 Funding, LLC.

24 MR. LEIGH: Good morning, Your Honor.

25 THE COURT: Good morning, everyone. I'd ask that



1 folks on the phone please just keep your phone muted  
2 when you're not speaking. I know they are a lot of  
3 people on the line, and we can sometimes hear the  
4 background noise.

5 All right. Good morning, everyone. We have a full  
6 courtroom today and, hopefully, we have a overflow space  
7 so people can at least listen by phone. Before we get  
8 started today, there's a few comments I would like to  
9 make. First, this is a court hearing, so I know some  
10 people brought signs and things. I ask that everyone be  
11 respectful today. I know folks are very upset, but we  
12 need to proceed in a fashion of decorum. If there are  
13 any outbursts or anyone who is getting emotional, I am  
14 unfortunately going to have to ask you to leave today,  
15 so I just ask that people behave in a respectful fashion  
16 today.

17 I want to briefly talk about the sealing motion  
18 because I know many people are upset that the debtors  
19 filed their hospital closure motion under seal and were  
20 allowed to keep it sealed until the hearing last week.  
21 I let the debtors do this because they had articulated  
22 credible concerns, that there would an immediate threat  
23 to patients' lives and safety if the contents of their  
24 motion became widely known before the hearing. There  
25 are specific legal standards that allow a document to be



1 sealed for these reasons, and this was not an  
2 unprecedented request.

3 Still, I was not happy doing this. Principles of  
4 transparency and openness are very important to me. I  
5 know there's intense public interest in this bankruptcy  
6 case as evidenced by the number of people here today and  
7 the coverage this case has received in the Yakima  
8 Herald. I want the public to be able to attend,  
9 participate and understand what is happening in this  
10 court. These are valuable fundamental aspects of our  
11 legal process in civil society, and they matter deeply.

12 At the same time, however, these values need to be  
13 balanced against the risk to human lives. In that  
14 balancing, I made a judgment that the human lives are  
15 more important, but I also tried to offset this by  
16 requiring that the motion be publicly filed in its  
17 entirety as soon as possible.

18 Some of the lawyers involved in this case have  
19 suggested that the debtors' concerns about what would  
20 happen were overstated and that nothing bad would have  
21 happened if the requested relief had been made public.  
22 Maybe or maybe not. And the only way to know for sure  
23 would have been to test this out, but if something  
24 tragic happened, that couldn't have been done. If the  
25 debtors are right and something horrible happened,



1 there's no way to push the reset button and go back.

2 The Court was not willing to take that bet. We  
3 don't gamble with human lives here. I made a judgment  
4 call that the risk of something horrible happening, even  
5 if a very small risk, outweighed the other concerns, the  
6 gravity of these potential consequences must not be lost  
7 in the calculus. Indeed, it is part of the established  
8 law I mentioned about when a document can be sealed.

9 This is not an easy choice for me to make, but  
10 judges are appointed to make hard choices, and it was  
11 the choice I made. I stand by it today. I know people  
12 are upset about that. I totally understand why you're  
13 upset and I will have to live with the fact that I  
14 allowed the debtors to proceed in the fashion they  
15 proposed. It was done solely because of the immediate  
16 risks that the debtors convinced me were posed to human  
17 health and safety if we did otherwise.

18 The next thing I want to talk about is the role of  
19 the Court in a closure motion like this under the law.  
20 This is one with an established statutory standard under  
21 the bankruptcy code. The role of this court is not to  
22 order what I think should be done or make a decision  
23 working off a blank slate, rather the Court reviews a  
24 decision that the debtors have made using what is known  
25 as the business judgment rule. Under that law, the



1 Court assesses the situation and decides whether the  
2 debtors have made a reasonable business decision.

3 If the decision is a reasonable one, then the Court  
4 must grant the motion, even if the Court might make a  
5 different decision or want to do something else. The  
6 business judgment rule is used here because it is not  
7 the job of the bankruptcy judges to run businesses for  
8 them. I have no special expertise running companies and  
9 I have no experience running a hospital. The debtors  
10 need to run their business and make business decisions  
11 about what they want to do or not do. The Court's job  
12 is to determine whether the ultimate decision that they  
13 make is in the realm of reasonable decisions that could  
14 be made.

15 What I want to do or what I think should be done  
16 here is completely irrelevant. This is not a demand --  
17 demanding standard. Last year Supreme Court Justice  
18 Elena Kagan wrote a decision in a case called Mission  
19 Product Holdings versus Tempnology that explained how  
20 the business judgment rule is, quote, deferential, and a  
21 bankruptcy court, quote, will generally approve the  
22 debtor's choice about what to do.

23 This does not mean debtors always win. Debtors can  
24 and do request authority to do things that are  
25 reasonable under the circumstances for various reasons.



1     What this court needs to conclude in order to deny this  
2     sort of request, however, is that the debtors want to do  
3     something that is situated off the spectrum of the  
4     possible choices that a reasonable person might want to  
5     make under the circumstances.

6             Finally, I want to talk about what's going to  
7     happen today. We're here because the Washington State  
8     Nurses Association filed a motion for reconsideration of  
9     my order granting the debtors' closure motion  
10    (unintelligible).

11            THE COURT: I'm sorry, could folks on the phone  
12    mute their phones? We're getting some feedback. Put  
13    your phones on mute, if you can.

14            Reconsideration requests implicate what's called  
15    Federal Rule of Civil Procedure 60, which allows a court  
16    to reconsider its prior orders for several reasons that  
17    are well-developed in the case law. A reconsideration  
18    motion generally is a high bar for anyone to meet.  
19    Today I'm going to be applying a somewhat lower bar  
20    given these pretty unique circumstances where some  
21    parties were not able to participate last week. That  
22    does not change the ultimate standard established under  
23    the business rule -- business judgment rule I just  
24    discussed. That's a standard established by federal  
25    bankruptcy law that only Congress can change. Whether



1 in -- the debtors are entitled to have the choice they  
2 made reviewed by this court using the business judgment  
3 rule. So we're going to proceed in the following  
4 fashion.

5 Mr. Gallagher, the debtor's CEO, is in court today.  
6 Mr. Gallagher submitted a declaration in support of the  
7 closure motion. I'm going to ask him a couple of quick  
8 questions about that and the declaration will likely be  
9 admitted in his direct testimony. Mr. Dalmat, and any  
10 of the other lawyers here today, can then ask  
11 Mr. Gallagher questions on cross-examination and the  
12 debtor can ask him some redirect questions if they like.  
13 We will then do direct and cross-examination of any  
14 other witnesses who are here today to testify. I will  
15 then hear arguments and statements by any members of the  
16 public who would like to address the Court today, and  
17 then I will make a decision.

18 I want to address two quick housekeeping today.  
19 First, I have another hearing today in a different case  
20 at 1:30. I'm not sure how long everything will take,  
21 and this is important, but we can't spend all day in the  
22 court. I want to hear from people, I want people to  
23 have an opportunity to speak, but we will need to get  
24 concluded by lunchtime.

25 The second point I want to make is I'm not going to



1 allow -- I'm going to allow some cross-examination of  
2 Mr. Gallagher, but he is not here to be pilloried. If  
3 anyone starts asking questions that are not relevant or  
4 abusive, I'm going to stop that immediately.

5 So, Mr. Maizel, is there anything you would like to  
6 say before we get started?

7 MR. MAIZEL: Your Honor, Sam Maizel for the  
8 debtors.

9 Your Honor, the first issue I think the Court has  
10 to address before any witnesses take the stand, although  
11 Mr. Gallagher can testify to this, is whether this  
12 proceeding is moot. There are no patients, and  
13 Mr. Gallagher can testify to this, as can Mr. Lane,  
14 there are no patients and the hospital company  
15 relinquished its license this morning to the State  
16 Department of Health. So I think the main issue for the  
17 Court to decide this morning is does this hearing even  
18 go forward because of mootness.

19 THE COURT: Mr. Maizel, I reviewed your papers on  
20 that. I am going to take that under submission and rule  
21 on that later, if I need to. I think we should go  
22 forward. I also saw your papers suggesting the Court  
23 doesn't have jurisdiction to go forward today basically  
24 because of a standing issue or otherwise.

25 MR. MAIZEL: Your Honor, I don't think we raised





1 the issue whether the Court has jurisdiction. I do  
2 think there are limits to the Union's standing to  
3 prosecute the arguments that they have raised. For  
4 example, under the collective bargaining agreement, they  
5 have conceded the management -- the operations of the  
6 hospital are exclusively the right of the management and  
7 the collective bargaining agreement (unintelligible.)  
8 Because of those limits, we do think there are questions  
9 about the Union's standing to prosecute those issues.

10 The other issue that I don't believe the Union's  
11 standing to decide to prosecute is the sort of  
12 generalized issue that they appear to want to focus on,  
13 which is what happens to the community's access to  
14 healthcare, the availability of healthcare generally in  
15 the community, which is a concern to the state  
16 regulators and is certainly a concern to politicians,  
17 the community at large. The debtor's business judgment  
18 has to focus on its fiduciary duties, one to the  
19 charitable mission, one to the creditors that it serves  
20 as debtor-in-possession.

21 And so questions that relate to the business  
22 judgment of the debtor, fair game. Questions that  
23 relate to the sort of generalized impact, the  
24 availability of healthcare in the community, I think,  
25 are beyond -- first of all, beyond the standing of the



1 Union to raise that issue. And, honestly, I don't know  
2 how the Court adjudicates that.

3 THE COURT: I understand what you're saying,  
4 Mr. Maizel. I'm going to let the nurses make a record  
5 here and I will take the standing issue under submission  
6 and decide that at the end of the hearing.

7 MR. MAIZEL: Thank you, Your Honor.

8 THE COURT: Mr. Gallagher -- (unintelligible.)

9 Again, if there are folks on the line who can mute  
10 their phones, I'd appreciate it. We're getting some  
11 feedback in the courtroom which makes it difficult for  
12 everyone, including everyone on the phone.

13 MR. DALMAT: If it's okay, Your Honor, I'd like to  
14 defer the cross-examination of Mr. Gallagher until the  
15 end of the hearing and after the nurses and the other  
16 witnesses have had an opportunity to speak.

17 THE COURT: Mr. Maizel.

18 MR. MAIZEL: (Inaudible.)

19 THE COURT: Okay. I am. Mr. Gallagher, that's  
20 fine.

21 MR. DALMAT: Thank you, Your Honor.

22 THE COURT: Mr. Dalmat, how many witnesses do you  
23 anticipate?

24 MR. DALMAT: We have seven witnesses: one nun, four  
25 nurses and two doctors.



1 THE COURT: Okay. I want the people to have the  
2 opportunity to be heard. If it's cumulative, I think  
3 Mr. Maizel can appropriately object, but --

4 MR. DALMAT: Understood. Just so Your Honor knows,  
5 it's my intention to keep each testimony to 10 to 15  
6 minutes, and I will try my best to avoid redundancies

7 THE COURT: Okay. I don't want cumulative  
8 testimony and, again, if we can be done around lunchtime  
9 today, if possible. So please go ahead and call your  
10 first witness.

11 MR. DALMAT: Thank you. I call Sister Fe Sumalde.

12 THE COURT: Please come on up to the box. Morning.  
13 Go ahead and have a seat, raise your right hand.

14 SISTER FE SUMALDE,  
15 called as a witness, and having been first duly sworn,  
16 testified as follows:

17 EXAMINATION

18 BY MR. DALMAT:

19 Q. Good morning, Sister. I'm hoping that you can tell us a  
20 little bit about the mission of this hospital, and today  
21 I'm going to use the term Regional to refer to what is  
22 sometimes referred to as Yakima Regional Medical Center  
23 in some fashion, but I'm just going to (unintelligible.)

24 MR. MAIZEL: (Inaudible.)

25 THE COURT: Mr. Gallagher, please go ahead and lay



1 a foundation. Mr. Maizel, I'm not going to be super  
2 persnickety on evidentiary objections just because --

3 MR. MAIZEL: (Inaudible.)

4 THE COURT: I understand you're right. You know  
5 you're right, but if we get hung up in the gears and  
6 perhaps end up in the gears with evidentiary objections,  
7 we're going to be here a lot longer. I want to give  
8 people an opportunity to speak, so I understand.

9 (Background interference.)

10 UNIDENTIFIED SPEAKER: What? I can't. I'm  
11 listening to the trial.

12 THE COURT: Can the person who's listening please  
13 mute their phone.

14 MR. MAIZEL: Your Honor, the only thing I'd say is  
15 that -- (unintelligible) as to the testimony. I don't  
16 know anything about the witness.

17 THE COURT: That's a fair point. Please lay a  
18 little better foundation. Again, Mr. Maizel, I ask you  
19 to be restrained in terms of your objections today.

20 MR. DALMAT: With the apologies to the Court, the  
21 other witnesses I have spoken with over the weekend and  
22 I have a better understanding. I learned just this  
23 morning that the sister's willing to testify on this  
24 topic, but I will do my best.

25 BY MR. DALMAT:



1 Q. Can you tell us (unintelligible)?

2 A. Can you repeat that question, please.

3 Q. Absolutely. My question is: As of last week, where did  
4 you work?

5 A. As of last week, I'm working Yakima in the hospital as  
6 of last week.

7 Q. Are you familiar with the mission (unintelligible)?

8 A. Yes. The Sisters of Providence have a long history with  
9 this community. The nuns from Montreal came all the way  
10 here before we were all born. First, the mountains to  
11 travel. These nuns, that they travel -- if you know  
12 their history, if all of you know the history, and also  
13 this nun that she came from Montreal, Mother Joseph, she  
14 has a statue in Olympia, the capital. So this is the  
15 testament of this nun, the Sisters of Providence.

16 Q. Why did they found the hospital?

17 A. Originally, that's when the sisters from Montreal came  
18 to the west. I don't want to go through. In order to  
19 travel to build the hospital, the hospitals, the  
20 schools, and also to help the poor. This struggle, they  
21 sacrifice their life during that time, struggle in terms  
22 of the language, struggles in terms of their traveling  
23 by horseback. Traveling -- also struggled by their  
24 lives because their faith and their love of the people.

25 Those are the things. It's really important, all



1 of us that work in the school or the church or the  
2 hospitals, we are part of that. We are part of the  
3 human family to be able to serve, to help, and it is  
4 really difficult for me to be here with all of you to  
5 stand here because since last week, I was struggling,  
6 and I don't know what I can do. It's beyond me, but I  
7 ask God to help all of us, to give her strength and  
8 courage to carry on with this so we can continue the  
9 human families. That's the bottom line.

10 Q. Do you know when the sisters originally founded the  
11 hospital?

12 A. As far as I know, I think it's 1981, or -- you know,  
13 running so many things in my mind, I cannot think  
14 straight, but this is the point I'm making here, that  
15 all of us are part of this.

16 Q. Today, I want to ask you (unintelligible) about Regional  
17 hospital and the mission that you've described in terms  
18 of serving the board.

19 A. Precisely. That's supposed to be. Supposed to be.  
20 That's supposed to be. Those are the things that I --  
21 some of you and probably the paper learn the reputation  
22 at all. So those are the things we are here -- we don't  
23 want to be here until midnight. I want specifically to  
24 be able to get these things straight so that we can  
25 continue to serve. Those are the things.



1 (Unintelligible) several times because all these  
2 changes. We need to focus and really think consciously,  
3 emotionally, faithfully to be able to do the right  
4 thing, what we are going and supposed to do, that we are  
5 here. That's the mission.

6 I cannot -- among other things, I wake up in the  
7 middle of the night, thinking of all these things  
8 what -- why is this thing happening. And, you know, to  
9 me I wish I could say I am proud working in  
10 (unintelligible), but I am not. I am not. I am hurt.  
11 I am hurt. These other things, so many things that we  
12 have supposed to do, all of us to do our job, our  
13 responsibility, these are the things all of us -- there  
14 is no exception at all. I serve here. I've been here  
15 in Yakima Regional in Yakima Valley for 23 years. Some  
16 of the people that I encounter, patients, family,  
17 spouse, everybody in the hospital in this community, I  
18 am so really right now heartbroken, and I don't know.  
19 This is the first time that it happens in Yakima  
20 Valley.

21 MR. DALMAT: Thank you for your testimony.

22 THE COURT: Mr. Maizel?

23 MR. MAIZEL: (Inaudible.)

24 (No audible recording.)

25 //



1 EXAMINATION

2 BY MR. DALMAT:

3 Q. As of last week, (unintelligible) what was your  
4 (unintelligible.)

5 A. (Inaudible.)

6 Q. Well, describe what those positions entailed on a  
7 day-today basis?

8 A. (Inaudible.)

9 Q. And how long have you been a nurse?

10 A. Thirty-five years.

11 Q. How much of it was in the Yakima area?

12 A. I started when Astria Regional was (inaudible) 1985. I  
13 worked there for five years. My ultimate goal was to  
14 work in emergency (unintelligible.)

15 (Background interference.)

16 UNIDENTIFIED SPEAKER: You guys are supposed to  
17 mute your phones.

18 A. (Inaudible) started off on the unit for a couple of  
19 years and I was in the (unintelligible) emergency  
20 department in Yakima. I was the coordinator since 2016.

21 Q. Thank you. And again, just briefly, but can you give us  
22 an overview of other hospitals that exist in the region  
23 and how far they are from Regional?

24 A. Right. We have long transport times, first of all,  
25 within our region because of mountainous areas and such.





1 Also, it's very, very rural areas, like What's One  
2 (phonetic). That's an ambulance service that brings  
3 patients to us. We have --

4 Q. Within Yakima, what other hospitals?

5 A. Other hospital is Valley Memorial. They have the same  
6 capabilities as us. The only difference, of course, is  
7 that we did have four neurosurgeons that we could  
8 provide neurosurgical care, not only for spinal injuries  
9 but we're talking emergent cases of head injuries that  
10 may need to go to operating immediately.

11 Q. Give me an example, if you would, of what kind of a  
12 situation would hire a neurosurgeon. What's typical in  
13 terms of what Regional served?

14 A. Well, a fall, especially now that a lot of people are on  
15 anticoagulants, that's a prime example, but we do --  
16 that's one of the number-one situations. Our trauma  
17 patients are falls in our county because all of the  
18 fruit picking and such like that. Also, of course,  
19 (unintelligible.) We certainly have a lot of gunshots  
20 as well. The other type of service that we also had,  
21 too, was the cardiothoracic surgeons.

22 Q. What is that?

23 A. So not only for -- the cardiothoracic surgeons are here  
24 because they can do, of course, open heart surgery, and  
25 of course we had that program since the '70s. Not only



1 can they take care of you if you need that because of a  
2 heart issue, in that sense and so forth, but also for  
3 trauma. I mean, if you have a heart that's been  
4 damaged, you're not leaving this -- you're not leaving  
5 the city either. You're going to die. That's the way  
6 it is. With us, being open, they have a chance.

7 Q. So you mentioned neurosurgeons and you mentioned the  
8 cardiothoracic surgery with the open heart. Are there  
9 other service lines that Regional does?

10 (Dog barking.)

11 A. (Inaudible.)

12 Q. Explain what that means again in as plain terms as you  
13 can.

14 A. If you're having a heart attack, you're going to be  
15 taken immediately to the cath lab. And I wish I could  
16 give -- have one of my cath lab people come in and  
17 explain perfectly, but basically they put a catheter in  
18 you, run some dye, identify the blockages. If they're  
19 able to, then they can put in stents -- go like this if  
20 I'm standing right. And if they're able to do that,  
21 yay, this is a great thing. If they're not able to do  
22 that -- and/or there is an incident where maybe there's  
23 an opening that goes here -- that you accidentally go  
24 through the vessel wall, you need a cath -- you need to  
25 leave that cath lab and you need to go immediately to



1 have open heart.

2 Q. Do you have an understanding of whether there are any  
3 other hospitals in Yakima that have that  
4 (unintelligible)?

5 A. Yes. Certainly.

6 Q. What is it?

7 A. Virginia Mason-Valley Memorial. They are able to  
8 perform cath lab procedures; however, they cannot  
9 provide heart backup. Just this last year, I can tell  
10 you three people who had cath procedures done over at  
11 Memorial, and they had to -- it didn't work out. They  
12 had to be put in the back of the ambulance and rushed to  
13 my hospital to have an open heart procedure.

14 Q. What do you think will happen to patients who have to  
15 have a heart procedure and there's no open heart backup  
16 in a sense?

17 A. Well, it's been told to me in the past that those things  
18 are very rare. And it's kind of like, you know, people  
19 don't want to take -- they maybe don't want to risk  
20 their child getting an immunization for risk that  
21 something bad can happen. It's a low -- but you know  
22 what, it happens. Would I go for a cardiac cath without  
23 a heart backup, heck no, nor would any of my family  
24 members, or anybody that I would ever, you know, advise.  
25 So --



1 Q. If Regional remains closed, what would be the next  
2 closest place a patient can get an open heart surgery?

3 A. They are either going to have to fly over the mountains  
4 or they are going to have to go down to Cadillac.

5 Q. How far is Cadillac?

6 A. Cadillac is probably about 80 miles.

7 Q. What town is that in?

8 A. That's in Richland, Washington.

9 Q. And your best estimate of how long it would take to get  
10 there?

11 A. Well, it depends. Right now we do have a fixed wing at  
12 our hangar over here from Airlift Northwest that's  
13 potentially possible if they are not already taking  
14 somebody some place. And they could probably get there  
15 within maybe 30 minutes.

16 The other potential is helicopter, not during  
17 inclement weather, though. Airlift is no longer in our  
18 city, they send them to Wenatchee. The closest  
19 helicopter in the Tri-Cities as well. They have to come  
20 up and pick patient up. It, again, would maybe cut the  
21 time down to 20 minutes.

22 Q. And if those air options are not available?

23 A. Ambulance is probably going to be maybe an hour and ten  
24 minutes.

25 Q. (Unintelligible.)



1 A. Absolutely.

2 Q. What if there's snow like there is today?

3 A. Maybe a little longer. Right now it's the slick roads,  
4 very slick. Not only inclement weather, we have to  
5 worry about is right now we're operating on a very, very  
6 short amount of pre-hospital capability. We don't have  
7 enough ambulance services to -- we don't have enough  
8 paramedics and/or service to provide for -- for us and  
9 within our city.

10 So, for instance, each -- each -- we need to have  
11 so many ambulances that cover so many areas. The 911  
12 call. They're having a heart attack. They can't leave  
13 their service area. If I'm calling them to say, "I've  
14 got a guy that needs to go have an open heart procedure  
15 now," and we already are super low with our ambulance  
16 providers, they are going to say, "I can't leave my  
17 service area."

18 And there's nothing that can be done with that.

19 Q. In your position as a trauma nurse (unintelligible)?

20 A. Well, it's going to be mayhem, bedlam. It's going to be  
21 an awful situation. I don't want anybody to think that  
22 I'm Chicken Little and say the sky is falling, but this  
23 is my business. I've been doing this, as I said, for 30  
24 years and it is putting our community at risk. What  
25 makes me so -- is that I have as a trauma coordinator



1 given assurances to everybody in the region. I meet  
2 with them monthly, and we're here, we provide the  
3 service. And for us to be redesignated, we have to  
4 write a proposal every three years. I was directed by  
5 my administration that that is what they wanted to do in  
6 September. I had to get the letter of intent in.

7 Q. By September?

8 A. September of this year, 2019, and I spent the entire  
9 month of December writing this proposal to the state.  
10 This is four binders that are, you know, like, three  
11 inches thick. I had to send them to the state when we  
12 were supposed to have the evaluating team come look at  
13 our medical records, look at our facility, and see if we  
14 can continue to provide trauma services. And I had that  
15 in -- I had to get that in. I had a little bit of an  
16 extension because I didn't have all my data, but I  
17 turned that in December 31st. Nobody from  
18 administration was around except for my CNO that was  
19 been able to sign for me. I couldn't turn the signature  
20 of assurance in to the state, but my state said, "Go  
21 ahead. Send it in. We'll get the signatures later."

22 None of them came to me and said, "Gosh, Laurie, I  
23 just don't think this is going to work out and I'm  
24 really worried about this."

25 If somebody had done that and we had been over the



1 preplan, this would have been a lot less of an issue. I  
2 was just yesterday in Yakima County EMS office and spoke  
3 with the director of EMS and asked him, "Do you know  
4 about a plan because the papers keep referring to my  
5 administrator of Valley Memorial speaking about a  
6 plan."

7 He said, "Nope. I have no plan."

8 Okay. Tell me when I'm not supposed to talk.

9 Q. (Inaudible.)

10 A. Okay. All right. Just so you understand. No plan.

11 Q. Okay. Let's go back for a second to when -- before the  
12 recent events. How did having two hospitals in the city  
13 of Yakima enable the city to better deal with trauma  
14 incidents?

15 A. Well, because Sunnyside as well as Toppenish are level  
16 4s, meaning they are sent here either as a trauma  
17 surgeon 24/7, that means that they -- and their  
18 ambulance services even from the lower valley can get to  
19 one of our hospitals within 30 minutes, but that's the  
20 rule. It's a nice little care within 30 minutes. I  
21 have two -- two facilities that could take care of  
22 patients like that. And we did share, like every other  
23 day, medical control. And, basically, that just gives  
24 the hospital -- when EMS calls and says, "I've got a  
25 multisystem accident. I've got several people involved



1       that need to be transported."

2               That gives -- we had one in May. We had a car  
3 crash, and we had 11 people come in. So that's where,  
4 of course, we don't want to overwhelm systems. We don't  
5 want to send everybody to one facility. That's a  
6 disaster, right? So what do they do? They call us and  
7 say, "For medical control, what would you like to do?"

8               Well, we're going to split these patients up.  
9 We're going to take so many reds, which are  
10 considered -- we have got to go to the operating room  
11 right now. Yellows, we got to work them up a little bit  
12 more but still they may have to go to the operating room  
13 and then, of course, you've got the greens that are  
14 walking. They've got a scratch and need some sutures.

15              So now it can't be split up any longer. You have  
16 to go up the hill all of them at once. Doesn't matter  
17 they're the -- they're -- as -- you know, wonderful  
18 physicians, wonderful nurses, wonderful staff, but  
19 they're going to be overwhelmed, totally overwhelmed.

20                       (No audible recording.)

21               THE COURT: Mr. Maizel.

22               MR. MAIZEL: Sam Maizel for the debtors.

23                               EXAMINATION

24 BY MR. MAIZEL:

25 Q. How far is the other level 3 trauma center from the





1 hospital that's (inaudible) at least three of them?

2 Geographically, is it a mile, three miles?

3 A. About three and a half miles up the hill.

4 Q. And those programs that are unique that you described,

5 the neurosurgeons, the cardiothoracic and the other

6 program, do you know how much it costs to run those

7 programs?

8 A. No. But I bet they're very costly. I do.

9 Q. Do you know how much the hospital lost operating last  
10 year?

11 A. Only what I've read in the newspaper, but I know I  
12 don't. I can feel it.

13 Q. So you're familiar that the hospital operates at a  
14 significant financial loss?

15 A. Yes, absolutely.

16 MR. MAIZEL: I have no further questions.

17 THE COURT: Thank you, Mr. Maizel.

18 Any redirect -- thank you for your testimony.

19 Mr. Dalmat?

20 MR. DALMAT: I call Yvette Runyon.

21 YVETTE RUNYON,

22 called as a witness, and having been first duly sworn,

23 testified as follows:

24 EXAMINATION

25 BY MR. DALMAT:



1 Q. Good morning. As of last week, what was your  
2 position?

3 A. I was a registered nurse, charge nurse fill-in on the  
4 acute care unit.

5 Q. With whom?

6 A. Astria Regional.

7 Q. How long have you been a nurse?

8 A. I've been a nurse for over 20 years.

9 Q. With whom?

10 A. With several facilities in the community, and I've been  
11 at Astria for the last 11 and a half years.

12 Q. Are you familiar with the neurosurgery program at  
13 Regional?

14 A. I'm very familiar.

15 Q. How are you familiar with that?

16 A. Sunday, on the 5th, I actually had to come into the  
17 emergency room via ambulance, and I had -- the next  
18 morning, I had emergency back surgery.

19 Q. And what facility did you have that at?

20 A. At Astria.

21 Q. And if Astria remains closed, what would you have had to  
22 do to get treatment for that back surgery?

23 A. Well, because I came in through an ambulance, they may  
24 have taken me to Virginia Mason Memorial, but I think --  
25 I don't believe that they actually have a program for



1       neurosurgery there. So I would have had to either gone  
2       to Sunnyside possibly or over the mountain.

3   Q.   How far is Sunnyside?

4   A.   I believe it's about 40 miles. I don't go there very  
5       often.

6   Q.   And what effect, if any, would it have had on the  
7       quality of your treatment to -- had they had you get  
8       care at Sunnyside?

9   A.   Well, just from my home, which is five miles from  
10       Astria, the ambulance ride was kind of horrific because  
11       of the pain I was in due to my injury. So having to  
12       travel three or four times as far is -- would have been  
13       very detrimental, I think.

14   Q.   What, if any, follow-up would you have after a  
15       neurosurgery -- after the back surgery that you had?

16   A.   Basically, they make the -- actually, the neurosurgeon  
17       called me and -- just to see how I was doing, and then  
18       you have a two-week follow-up appointment. And I  
19       have -- I do have that appointment. And they actually  
20       have -- as I understand it, those offices are not  
21       closed. They're in town.

22   Q.   When you say "those offices are not closed," what are  
23       you referring to?

24   A.   The Astria clinics.

25   Q.   As a result of your back surgery, were you still working



1 at Regional when you learned of the events of last  
2 week?

3 A. Yeah. I was still an employee, but at that time I had  
4 been set up with home, FMLA, and that was in the process  
5 of being worked out. So I was -- actually, at the  
6 suggestion of my doctor, I have to be off four to six  
7 weeks from work because of my weight-lifting  
8 restrictions.

9 Q. And had you had any sick leave accrued at that time?

10 A. Absolutely, I did.

11 Q. About how much?

12 A. Two hundred and 43 hours, which would have been  
13 sufficient for my time off.

14 Q. Does that sick -- does the potential loss of that sick  
15 bank impact in any way on your considerations as you  
16 look for other employment?

17 A. Absolutely. Because, at this point, I was told -- I  
18 inquired to see if -- because I was on this leave, that  
19 if I was able to access that sick time, and I was told  
20 at the time that only up until the doors were open. So  
21 as of yesterday, when there were patients there back  
22 in -- as of now, I don't have access to that, sick time  
23 that I accrued as an employee.

24 MR. DALMAT: I think I have no further questions at  
25 this time.



1 THE COURT: Mr. Maizel?

2 MR. MAIZEL: I don't have any questions.

3 THE COURT: Mr. Dalmat?

4 MR. DALMAT: Call Dr. Rachel Monick.

5 THE COURT: What is your name?

6 DR. MONICK: Rachel Monick.

7 RACHEL MONICK,

8 called as a witness, and having been first duly sworn,

9 testified as follows:

10 EXAMINATION

11 BY MR. DALMAT:

12 Q. Good morning. As of last week, what was your  
13 position?

14 A. I was an emergency medicine physician at Astria Regional  
15 Hospital.

16 Q. And how long have you -- how long have you been in -- or  
17 how long did you have that position?

18 A. I was working at Astria Region- -- or I was working at  
19 Regional for six years, almost six years.

20 Q. And how long have you been a doctor?

21 A. I've been a doctor for 17 years.

22 Q. Where were you a doctor before you were at Regional?

23 A. I worked at Virginia Mason Memorial and the emergency  
24 department before that.

25 Q. How long were you at Memorial?



1 A. I was there for five years.

2 Q. And before that?

3 A. I was in Chicago. I was at Northwestern in Cook County.

4 Q. Why did you come to Yakima?

5 A. I came to Yakima because I met my husband at

6 Northwestern in Chicago, and he grew up here, and we

7 both -- we both fell in love with the area. And his

8 dad -- he joined his dad in the cardiology practice in

9 town.

10 Q. So both your husband and your father-in-law are  
11 cardiologists?

12 A. Yeah. My father-in-law is a retired cardiologist at  
13 this point, but he was -- yeah, very, very dedicated to  
14 the cardiology in town for several years.

15 Q. What differences, if any, have you noticed in the  
16 practice between Memorial and Regional, in particular,  
17 in terms of their population of patients?

18 A. (Inaudible.)

19 Q. (Inaudible.)

20 A. Yeah. And, sir, I actually had that first thought when  
21 you said that, too. Then I realized I was talking  
22 about -- I think -- then I realized where I think we  
23 were going is that, yeah, I wasn't going to then do  
24 that.

25 I think what -- one thing that we had talked about



1 is that I have noticed and really been surprised how --  
2 and then I looked at the DOH data to back it up, but how  
3 impressively different our population is at Virginia  
4 Mason Memorial versus Regional as far as the research.  
5 We -- I -- I felt like it was a few blocks away, it  
6 didn't seem like a big deal, you know, I thought -- and  
7 when I decided to move over, I went over because I liked  
8 trauma, and people like Laurie were there, but I didn't  
9 really think of how it was going to be that different  
10 otherwise. But it was a little -- I was a little blown  
11 away at the level of low-income people we see, which is,  
12 you know, honestly, probably why I'm having trouble.  
13 But the -- yeah, there's a great deal of people who  
14 don't have cars that walk in, and the 20-block  
15 difference is a really big difference for you if you  
16 don't have a vehicle or if you're homeless.

17 Q. In terms of the areas of the city, where is Regional  
18 located and where is Memorial located?

19 A. So Virginia Mason Memorial is in the kind of historic  
20 district which hasn't been able to maintain a  
21 significant area, and we're closer to the Amtrak and  
22 the -- I mean, at Regional, we are a lot closer to where  
23 the gunshots happen in the worst part of town.

24 Q. What effect, if any, do you think the closure of  
25 Regional will have on the population that you just



1 described, the lowest income people in Yakima?

2 A. Yeah. That's -- yeah, I didn't -- I hadn't answered  
3 yet. I'm sorry. Okay. Yeah. Okay. Sorry. Yeah.  
4 That -- that is -- honestly, that was my biggest worry,  
5 that part. Laurie did a great job of talking about the  
6 problems with the immediate closure and what we're going  
7 to be missing from that standpoint. I'm worried about  
8 what it means for more vulnerable populations. The  
9 first thing I thought on Wednesday when a friend told me  
10 on Facebook that we're closing was that I was -- I  
11 immediately thought about our patients and really  
12 worried about what they're going to do, worried about  
13 how the impact -- if you have a loss of resources, it's  
14 not as big a deal to imagine getting to another city for  
15 those resources.

16 If you need to go to Seattle to get your -- to  
17 Swedish to get your care figured out, but if you're a  
18 poor person and you've been transferred to Seattle and  
19 trying to stay in a hotel in Seattle, or if you don't  
20 have a vehicle, if you don't have your family to support  
21 you, it's a really significant impact what -- what you  
22 can -- what kind of support you have, your outcome  
23 eventually to not have what you need in town. It's  
24 disproportionately -- it's a disproportionate effect on  
25 our poorest people. That's the part that I can't sleep





1 at night about.

2 Q. You mentioned that your husband is a cardiologist at  
3 Memorial. Would you feel comfortable having someone in  
4 your family have a cath procedure at Memorial?

5 A. I'm not going to answer that exactly. I think it's --  
6 it's standard of care everywhere that you should have  
7 cardiothoracic backup if you're having a PCI procedure,  
8 and there's no cardiothoracic -- so if you're having  
9 electrophysiologic procedure or a procedure where you  
10 need -- so just a heart attack that happens every day,  
11 so it will happen today. If you are having one of those  
12 procedures, it is standard of care that you have open  
13 heart capabilities very close. Better if it's in the  
14 same hospital, really. That's what I would have chosen,  
15 but, if not, really close.

16 Q. And why is that?

17 A. And right now that's not available. Today that's not  
18 available in town.

19 Q. And the closest open heart is Cadillac; is that right?

20 A. Yeah.

21 Q. And why is that the standard of care? What is it --

22 A. That's because it's -- it's not -- because it's not --  
23 if you have a really -- it happens, even in the simple  
24 case sometimes, but especially in a more difficult case,  
25 you -- it's possible that you could perforate an artery,



1 and you need to have open heart available. I mean,  
2 it's -- I mean, there's other cases where it would be  
3 nice as well, but that's -- that's the simple reason why  
4 it's the standard of care. And, you know, we want the  
5 standard of care for our family, and so if you have  
6 resources, you will probably go to Seattle and get it  
7 done. If you don't, it's not a choice for you, and you  
8 won't get standard of care. So some people will have  
9 worse outcomes today than they had last week. Some  
10 people, and especially people who were shot, which is  
11 mostly us, the people that went to Regional. Because  
12 you go to the closest appropriate hospital, and you  
13 don't get shot in West Valley as often. So the closest  
14 appropriate hospital, you will -- we have a chance of  
15 saving you.

16 And we've had some insane saves. I mean, there's a  
17 guy who we were sewing his heart up in the ER, and then  
18 later that week, I went upstairs because I was, like, "I  
19 have to meet you. That's crazy."

20 But if we didn't have immediate bypass available  
21 and cardiothoracic backup, he wouldn't survive. That  
22 will happen, and so some people won't do as well. Some  
23 people will die that weren't going to die eventually.  
24 Not every day, but it's potential.

25 Q. You also have touched on a couple of times shootings



1 from your perspective as an ER doctor. Do you have any  
2 concerns about having only one hospital available in the  
3 city of Yakima when there is a shooting?

4 A. Yes. Not only a shooting. I mean, there's others --  
5 but yes. Specifically, when we have two main groups in  
6 town, and so a couple of years ago I had one summer  
7 where I had a major shooting every day I was on shift.  
8 So Friday, Saturday, Sunday, Monday. And, yeah, if you  
9 do -- I mean, you have the -- because in each one, it  
10 was nice. It was one shooting had to do with one side,  
11 and the other had to do with the other. There's always  
12 retaliatory. There's never such a thing as one person  
13 being shot in a gang situation.

14 There will be a retaliatory situation. We don't  
15 want to have both sides in the same hospital. If they  
16 will be going to the same hospital, you need to have a  
17 SWAT available every time there's a shooting. We go on  
18 lockdown when there's a shooting immediately because  
19 we're assuming there's not -- anyway, there's not as  
20 many accidents, so we go on lockdown immediately. And  
21 so right now SWAT needs to be available because it's an  
22 unsafe situation for the staff and for all the other  
23 patients in the hospital, but we have to take care of  
24 you. So you will have to have rival gangs in the same  
25 hospital.



1           Not just that, there was a terrible accident --  
2   there was an accident that happened where we had one  
3   extraordinarily sick patient who was trying -- was  
4   already had died, and we were doing post, and we brought  
5   back and eventually had -- but we thought at that time  
6   that she wasn't going to make it, and the rest of her  
7   classmates -- I was on medical control, our hospital was  
8   on medical control, and we decided it would be best to  
9   have the other students go to the other hospital so that  
10   there wasn't a lot of chaos and that we could have a lot  
11   of support around the family and be able to make  
12   decisions because we more or less talked about it.  
13   "Let's have this patient in case she doesn't make it and  
14   we can all talk and be supporting here," all of our  
15   staff on her trying to get her better and trying to get  
16   her stabilized, and then they could take care of the  
17   orthopedic things. And we work together and it -- get a  
18   better outcome. And we also had immediate neurosurgery  
19   input in her case. The outcome would be different.

20           MR. DALMAT: Thank you. That's all the questions I  
21   have.

22           (No audible recording.)

23           MR. MAIZEL: Your Honor, Sam Maizel for the  
24   debtors.

25   EXAMINATION



1 BY MR. MAIZEL:

2 Q. Doctor, you said that Astria provides care primarily to  
3 low-income people?

4 A. Disproportionately more than Memorial.

5 Q. What percentage would you say of the patients at Astria  
6 are (unintelligible)?

7 A. What I notice, I -- I really don't know that number,  
8 although I should have, including -- I actually looked  
9 it up the other day, but I just didn't take the  
10 percentage. I didn't actually do the percentage. What  
11 I looked at was who was private pay, and what I really  
12 noticed the difference was in private pay.

13 Q. What percentage was the private pay?

14 A. I don't know the percentage, but I can tell you when I  
15 was at Memorial, every day I went to work, I knew people  
16 that were there, and I have never seen any that were on  
17 the other side of town. And when I was at Memorial, I  
18 had -- I didn't realize there was an entire group of  
19 people who were -- who were working class that had  
20 walked there. And I asked why can't you just -- they  
21 walked there. I don't know what the person did. I'll  
22 stop talking.

23 Q. Do you know whether Medicare pays 100 percent of the  
24 deductible (inaudible) 100 percent of what it costs to  
25 treat a Medicare patient from the federal government?



1 A. One of the beauties of my job -- okay. So, yeah, I'm  
2 not a financial person. I'm a doctor.

3 Q. So you don't know if Medicare pays 100 percent or 50  
4 percent?

5 A. I don't see the billing, no.

6 Q. Do you know what the (inaudible) in Washington pays to  
7 treat a Medicaid patient?

8 A. No, I think that's probably for -- no.

9 Q. And treating the disproportionate share of Medicare and  
10 Medicaid patients that this hospital treats, do you  
11 think right now --

12 UNIDENTIFIED SPEAKER: Whoever is on the phone  
13 right now needs to mute their phone, please.

14 A. I absolutely agree. I think that that's the key. I  
15 think it's also where it's important for the community  
16 to know what -- what is -- I mean, what we're in for.  
17 But I also assumed that Astria Health knew what they  
18 were getting into.

19 Q. So who -- (unintelligible)?

20 A. I mean, just --

21 Q. Wait, Doctor, there's no question pending, so let me ask  
22 the question and you may answer.

23 A. I know. It's okay. I'm sorry. Of course.

24 Q. So you just said Astria Health knew what they were  
25 getting into. What is Astria Health? Who are they? Do



1       you know who the board of the hospital is?

2               UNIDENTIFIED SPEAKER: You need to turn it up. We  
3       can't hear.

4   A. I read their names online. The Astria health board is  
5       separate from Regional health board, and I do know their  
6       names, but no, I have not met those people other  
7       than doc- -- sorry. Other than John Gallagher.

8   Q. But would it surprise you, then, to learn that the board  
9       members are community members?

10   A. No. Because I think that it's -- I think that maybe  
11       they -- I think a lot of people go day to day not  
12       realizing what the impact is if they are not in the  
13       medical field. I don't know if everybody knows of those  
14       things.

15   Q. I'm curious about that because your testimony is solely  
16       about the medical impact. My question is about who's  
17       paying for it. And is it your testimony that you have  
18       no idea --

19   A. No.

20   Q. -- whether this hospital can survive financially given  
21       the patient mix it has?

22   A. Yes.

23   Q. Okay. That's a fair answer.

24               Would you -- you testified --

25               THE COURT: (Inaudible.) It might help if you



1       could --

2               THE WITNESS: I mean, I could say I don't know.

3               MR. MAIZEL: I can wrestle it down to a five, Your  
4       Honor.

5 BY MR. MAIZEL:

6 Q. You testified that this closure would be bad for access  
7       generally to healthcare to the community. Is that your  
8       testimony?

9 A. More -- yes. And more specifically because I  
10      honestly -- I mean, with -- also kind of referencing  
11      what you were saying right then, I think that it's also  
12      important the immediate closure -- the immediate closure  
13      without time to prepare, specifically, in this case,  
14      time for Virginia Mason, time for the state, anything --  
15      some miracles that some time -- the immediate closure is  
16      also what really bothers me because -- without planning  
17      time.

18 Q. Do you have any idea about the financial situation that  
19      led to the decision?

20 A. Well, I've been on the medical executive committee for  
21      four years, so I get as much information as I can.  
22      Whatever Gallagher -- Mr. Gallagher has presented to the  
23      medical executive committee, I have, but no, I don't --  
24      I think a lot of us don't understand what the financial  
25      situation is entirely at Astria.





1 Q. Are you aware that the hospital lost \$2.8 million in  
2 December alone?

3 A. That's what I understood. That's what I learned from --

4 Q. You testified that there was an issue with access --  
5 that there would be an issue with access if this  
6 hospital closed and, in particular, with the low-income  
7 people. Is it true that low-income populations in  
8 America generally have issues, difficulties with access  
9 to healthcare?

10 A. It is true, but it's a lot different in Chicago with 52  
11 ERs than it is in a rural community where you have to  
12 travel possibly two hours to Seattle to get what you  
13 need.

14 Q. Are you aware that rural hospitals in America are  
15 closing at the rate of 30 last year alone?

16 A. Tragic.

17 Q. You testified about the distance people would have to  
18 travel to emergency rooms if this one closed. Could you  
19 describe the federal rules entitling American citizens  
20 to access to emergency rooms within a certain  
21 distance?

22 A. Yeah. Yeah. Can you ask that question again? I just  
23 didn't -- can you repeat it.

24 Q. Are there federal laws that you're aware of as an  
25 experienced doctor that entitled people to have an



1 emergency room within a certain number of miles or  
2 certain number of minutes?

3 A. No. But I was talking about the care. I was talking  
4 about access lines that we have here that we chose to  
5 close.

6 Q. Are there any state laws that entitle citizens of the  
7 state of Washington to have an emergency room within a  
8 certain number of miles or a certain number of  
9 minutes?

10 A. I don't think that's what we are here talking about  
11 entirely. I think the judge is talking about the  
12 impact -- it's a nonprofit organization that deals in  
13 human lives. So that's, I think, why he's allowing us  
14 to talk about the impact to the community. It's not  
15 just a business. It's a business that deals with human  
16 lives, and it's a nonprofit business dealing with human  
17 lives. Once your business becomes dealing with human  
18 lives and it's nonprofit, it becomes important what the  
19 community impact is.

20 Q. Do you know if nonprofit companies like Astria have  
21 access to -- I mean, strike that.

22 You have testified that there's a need for a second  
23 hospital like Astria. Does the city of Yakima have  
24 financial resources available to ensure the existence of  
25 a second hospital? That's your question.



1 A. Yeah, I know. I honestly don't know that.

2 Q. Do you know whether the county has financial resources  
3 available to support the second hospital that you say is  
4 necessary?

5 A. I think that we're getting closer, and I was hoping --  
6 honestly, part of why I'm here is, hopefully, someone in  
7 the state notices what we're doing, too.

8 Q. Do you know whether the state has financial resources  
9 available to keep -- ensure the existence of a second  
10 hospital here?

11 A. I'm aware that -- that it -- that healthcare's a crisis  
12 right now, and that we're all having trouble.

13 Q. Based on the answers to the last few questions, I think  
14 it's safe to say that if I asked you if the federal  
15 government would put money in to make sure there was a  
16 second hospital here, your answer would also be you  
17 don't know?

18 THE COURT: Mr. Maizel, are you close to the end?

19 MR. MAIZEL: I'm done, Your Honor.

20 THE COURT: (Inaudible.)

21 THE WITNESS: I don't know. That's not my  
22 specialty.

23 THE COURT: Any redirect, Counsel?

24 (No audible recording.)

25 THE COURT: Mr. Dalmat?



1 (Applause.)

2 MR. DALMAT: Call Dr. Mark Silverstein.

3 MARK SILVERSTEIN,  
4 called as a witness, and having been first duly sworn,  
5 testified as follows:

6 EXAMINATION

7 BY MR. DALMAT:

8 Q. As of last week, where did you work?

9 A. At Astria Regional.

10 Q. And what was your position there?

11 A. I was the program director of the hospital's program,  
12 which is a medicine program for the hospital, and I was  
13 the chief of staff for the medical staff.

14 Q. How long had you worked at Astria or at Regional?

15 A. Since 2010, ten years.

16 Q. And how long have you been a doctor?

17 A. Twenty-three years since residency.

18 Q. What were your responsibilities as program director?

19 A. As program director, my job is to be a practicing  
20 hospitalist and a player/coach, so to speak. So I ran  
21 the -- made sure that all the people that worked with me  
22 were doing what they should do. We -- I kept track of  
23 all the data matrix for what came in through our  
24 service. I managed the office staff that were involved  
25 with us.



1 I, basically, interacted with the home office of my  
2 management company, which is in Scottsdale, Arizona. I  
3 held team meetings every month. I disciplined people,  
4 up-managed people, as necessary, and anything else a  
5 manager would do outside of a medical practice.

6 Q. Okay. And as chief of staff, what were your  
7 responsibilities?

8 A. Primarily, we kind of heard the doctors. I acted as a  
9 liaison between the staff and the board of trustees by  
10 being on there. I was in charge of -- I guess the  
11 (unintelligible) or head of every committee if there was  
12 an issue. I ran the MEC meetings, was present for most  
13 all of them I was there for, and if there were  
14 disciplinary problems with physicians, often it would  
15 come down to me talking with them. If there were  
16 problems to be dealt with within any somewhat area, any  
17 area of the medical staff that was not administratively  
18 coordinated, it was up to my side of the thing, which is  
19 more -- it's more the medical side of things.

20 Q. And in terms of your own provision of medicine, what  
21 position did you have? I think you've described two  
22 administrative functions that you held, and I'm just  
23 asking, as a doctor, what did you do?

24 A. So, as a hospital, I was an internal medicine doctor who  
25 manages patients only on the inpatient level. So my



1 role was to work with the nurses and other physicians  
2 and act as -- most of the time as the primary admitter  
3 for patients to the hospital. And then make the  
4 decisions about who would get consulted, why would they  
5 get consulted, manage what a consultant brought to the  
6 table with them so that we directed, coordinated patient  
7 care to do what was best for our patients.

8 Additionally, we did inpatient consults on  
9 patients. We did some -- our ICU was an open ICU, so we  
10 would do higher-level care in the ICU, as needed.

11 Q. Got it.

12 A. Preop clearances, that sort of thing.

13 Q. So from your perspective in both the administrative and  
14 the medical side of things, what unique services, if  
15 any, did Regional provide to the region?

16 A. Well, the top of the food chain was the cardiothoracic  
17 surgery. More than just doing open hearts, they were  
18 available for doing VAT procedures, video-assisted  
19 thoracoscopic surgeries, lung biopsies, if necessary.  
20 Also, anything that falls under their aegis, that is not  
21 necessarily just doing a coronary bypass or graphy. We  
22 had that. We had the neurosurgery, which is really good  
23 to have, and that really did arrive with the arrival of  
24 Astria. We had one neurosurgeon who has been here for a  
25 long time -- I think about ten years or so.



1           And then with more of them, it brought more complex  
2       coverage of care for neurosurgery patients in the valley  
3       for us. Three cath labs that allowed us to deal with  
4       more than one emergent issue at a time, plus an  
5       electrophysiology portion in one of the cath labs that  
6       was important for placement of pacemakers and AICDs,  
7       which are electronic defibrillators that are implanted.  
8       We have -- nobody has neurology. Some of the other  
9       medical things. We had a -- we have a great orthopedics  
10      team or we did. Great dental surgery team.

11   Q. We have heard a little bit about what the loss of  
12      cardiovascular surgery means to the region. Yeah,  
13      cardiovascular, the open heart. Can you tell us from  
14      your perspective on the neurosurgery of what the medical  
15      impact of the loss of that service would be either on  
16      the city or the greater region?

17   A. Well, like Dr. Monick said, without a neurosurgeon  
18      available, when you have closed-head injuries and you  
19      might need emergent surgery, that's now going to be more  
20      problematic. It would involve transfer, whatever time  
21      that takes. Elective VAT surgeries that run into  
22      complications and end up with days in a hospital, we  
23      would have them, occasionally, and now those procedures  
24      may be less frequently attempted.

25   Q. Sure.



1 A. The loss of neurosurgery gives the community loss of  
2 consult in emergent situations, a loss of consult when  
3 somebody walks into the ER with back pain and do an MRI,  
4 and it shows, maybe an epidural abscess, or whatever  
5 caused that, and yet the neurosurgeons who --

6 UNIDENTIFIED SPEAKER: Whoever just coughed, please  
7 mute yourself.

8 A. -- or they look at a film and say, "Nah, it's not a  
9 abscess"

10 Or they look at a film that the radiologist has  
11 looked at and maybe missed an abscess there, and say,  
12 "Oh, that's an abscess," and go right into the surgery.  
13 An epidural abscess needs to be dealt with surgically as  
14 soon as possible; otherwise, you could lose your --  
15 everything beyond that at that level of the spine.

16 Q. Got it. You also mentioned that Regional has three cath  
17 labs. Do you have an understanding one way or another  
18 of how many cath labs are at Memorial?

19 A. Two.

20 Q. And do you have an understanding as to whether that's  
21 changing at any time?

22 A. I only know it was relayed to me a few days ago that  
23 they're going to go through a process of upgrading their  
24 cath labs. So that means probably one will be closed at  
25 a time during the year that it will take them to reduce,





1 and we will have one operating. Again, I don't have  
2 that written down anywhere.

3 Q. And in your medical opinion, what would be the effect if  
4 there's only one operating cath lab in the city of  
5 Yakima?

6 A. Well, if somebody comes up -- if somebody from Sunnyside  
7 calls and says, "We have a patient down here with an  
8 elevated component consistent with a non-SP elevated MI  
9 and chest pain, and we need to get them to the cath lab,  
10 because they're shocky and we need to pack them,"  
11 there's only one cath lab. So if you fill that up with  
12 somebody, and then another cardiovascular emergency  
13 happens, you're in trouble because you only have one  
14 place for them to go, and that's already occupied.

15 So in Rachel's -- Dr. Monick's world, stemmies  
16 (phonetic), they come into the ED and, historically, if  
17 they were to have an SP-elevated MI, which is a very --  
18 that's the heart attack you don't want to have. If --  
19 with our three cath labs, we could handle one at a time,  
20 or maybe two, I guess, if we had two interventionalists  
21 at the time there, but at least you always had one with  
22 us, and if the second one came in to us from Memorial or  
23 was coming in to us, we could have them go to Memorial,  
24 and Memorial could handle that. So now with one, maybe  
25 two cath labs open, it's going to be more problematic.



1 MR. DALMAT: That's all the questions I have at  
2 this time.

3 MR. MAIZEL: No questions, Your Honor.

4 THE COURT: Thank you, Doctor, for your  
5 (inaudible.)

6 MR. DALMAT: Call Lisa Bullock.

7 THE COURT: Just how many -- how many more?

8 MR. DALMAT: Just two. Her and one more after.  
9 Thank you, Your Honor.

10 THE COURT: All right. I want to make sure we  
11 have -- I assume you have some questions for  
12 Mr. Gallagher, so I want to make sure we have some time  
13 for that. Okay.

14 LISA BULLOCK,  
15 called as a witness, and having been first duly sworn,  
16 testified as follows:

17 EXAMINATION

18 BY MR. DALMAT:

19 Q. Good morning.

20 A. Morning.

21 Q. As of last week, where did you work?

22 A. As Yakima Regional Hospital.

23 Q. What was your position?

24 A. Registered nurse.

25 Q. In what department?



1 A. For the last 14 years, I've worked in the same-day  
2 surgery, and for the previous six years before that I  
3 worked on the acute care and ICU and ortho/neuro, of  
4 course. So for 21 years.

5 Q. Do you recall attending an employee forum shortly after  
6 the bankruptcy commenced?

7 A. I do.

8 Q. Where did that take place?

9 A. That took place over at St. Elizabeth Hall in the Murphy  
10 Auditorium.

11 Q. And other than employees of Regional, who else, if  
12 anyone, attended that?

13 A. John Gallagher and his attorneys.

14 Q. Do you recognize any of his attorneys?

15 A. Not really. I recognize John Gallagher. It was quite a  
16 while ago, so I see a lot of faces.

17 Q. What do you recall from that meeting?

18 A. There was a lot of discussion about why we were having  
19 the bankruptcy, and, you know, a lot of reassurance to  
20 the staff that this is the direction we needed to go,  
21 that things were, hopefully, going to be okay. I asked  
22 specific questions to the attorney because I knew we  
23 were in a Chapter 11, and I asked the attorney at which  
24 point would the Chapter 11 turn into a Chapter 7.

25 Q. For those of us who are not lawyers in the room, what



1 did your question mean in plain English?

2 A. Basically, when would the door close.

3 Q. And what answer do you recall was given?

4 A. I was told that -- I was guaranteed that that would  
5 never happen; that the state would never allow a  
6 not-for-profit hospital to close the doors. And I hung  
7 onto that on a daily basis because I thought I was being  
8 told the truth, and I resent that I was being lied to.

9 MR. DALMAT: I have no further questions.

10 THE COURT: Counsel? Mr. Maizel?

11 MR. MAIZEL: No questions, Your Honor.

12 THE COURT: Thank you, Mr. Maizel.

13 Mr. Dalmat?

14 MR. DALMAT: Call Julia Varcott (phonetic).

15 THE COURT: Okay. Just have a seat. Raise your  
16 right hand.

17 JULIA VARCOTT,  
18 called as a witness, and having been first duly sworn,  
19 testified as follows:

20 EXAMINATION

21 BY MR. DALMAT:

22 Q. Good morning.

23 A. Good morning.

24 Q. Where do you work?

25 A. I worked at Astria Toppenish Hospital now. I was



1       employed from 2001 to 2014 in the ICU and previous in  
2       ortho/neuro at Astria Regional Hospital. I was there  
3       when it was Yakima Regional and formerly Providence.

4   Q.   Okay. And when did you start at Toppenish?

5   A.   About a year and a half ago.

6   Q.   What is your position there?

7   A.   I work ICU.

8   Q.   And did you get a call from anyone regarding staffing  
9       last night?

10  A.   I did. I went to bed. And it was probably around 10:00  
11       o'clock, somewhere around there, I often -- because I'm  
12       per diem, I often get a call if they have more critical  
13       patients or if they need more staff. And the nursing  
14       supervisor called me, so I answered.

15  Q.   And what did she say?

16  A.   She said they needed someone to watch the monitors, and  
17       because no one was available, they had permission to  
18       call in a nurse. And I asked, "What's up?" because I  
19       wasn't sure if I would be taking patients.

20               And she said, "We're getting a telemetry transfer  
21       from Memorial Hospital."

22  Q.   Plain english, what is a telemetry transfer?

23  A.   It's a patient that needs to be monitored.

24  Q.   And, in your experience, both at Regional and at  
25       Toppenish, how often does it happen that a cardiac



1 patient goes from Memorial to Toppenish?

2 A. It's never happened, that I'm aware of. The nursing  
3 supervisor was unaware of it ever happening before  
4 because we're going from a lesser level of care. Not  
5 that the nurses and everybody aren't great. We do ICU,  
6 we do drips, ventilators, but we usually send them up  
7 the road when we have issues where maybe someone is more  
8 profoundly sick and might need a cath lab. I am not  
9 aware if that patient was stable or anything. I just  
10 know that Memorial had no room for them.

11 Q. And when you say -- and I appreciate your caveat, but  
12 lesser level of care, is that -- what do you mean in  
13 terms -- which hospital are you talking about?

14 A. Toppenish. We often transfer -- we don't have a cath  
15 lab. We don't have open heart backup, anything like  
16 that. We can manage drips. We can manage hypertensive  
17 crises, certain types of heart attacks. But if it looks  
18 like somebody is progressing into a heart attack that  
19 needs a cath lab or possibly open heart, we first try to  
20 transfer to Astria, Yakima, because they have the open  
21 heart backup. If they're unable, then we would send  
22 them up to Memorial or sometimes Tri-Cities if Yakima  
23 doesn't have room.

24 Q. And what's your understanding of what the impact of care  
25 will be if cardiac patients in Memorial are getting



1 shipped out to Toppenish?

2 A. Well, I was frankly astounded, and then my second  
3 thought was here we go, because this is exactly what we  
4 were worried about. So I think that the people that are  
5 transferred, and I don't know if they looked at the  
6 people that were upstairs in their telemetry unit and  
7 said, "This one seems to be stable" --

8 THE CLERK: Please mute your phone.

9 A. -- ship this one out to get an ER in, or if it just came  
10 from ER. I -- you know, I wasn't in a position to ask  
11 that. I -- I was, like, "What are we going to be able  
12 to do for them?" I mean, we can monitor them, we can  
13 give them some medicine, but if they get worse, which  
14 oftentimes they do, and we don't -- you know, that's why  
15 we do the --

16 (Background interference.)

17 UNIDENTIFIED SPEAKER: Mute your phone.

18 THE WITNESS: Please. Please mute your phone.

19 So for us, the backup of being able to have another  
20 hospital --

21 UNIDENTIFIED SPEAKER: Mute your phone, lady.

22 THE WITNESS: -- that we can do that is paramount.  
23 And what happens is they told me -- I went back to bed.  
24 I laid there, and I said, "Did I just hear them say  
25 Memorial?"



1 UNIDENTIFIED SPEAKER: We don't care about your  
2 friggin' dog. Mute your phone.

3 THE COURT: Sir, please, everyone in the crowded  
4 courtroom can hear you yelling, sir. So I just ask that  
5 everyone be respectful. And, certainly, people should  
6 put their phones on mute, but also shouldn't yell at  
7 each other. If we can do that, that's fine.

8 Thank you for your effort to help, if the intention  
9 is -- well-intentioned even if the message is not sent  
10 very well. So, yeah, please, everyone mute your  
11 phones.

12 THE WITNESS: Anyway, I went back to bed because I  
13 said, "Well, I can't. I've got this going on today, you  
14 know, but if all heck breaks loose, call me back and I  
15 will try and help for a few hours."

16 And I laid down in bed and thought, all of a  
17 sudden, did they say Memorial? They are sending a  
18 patient for Toppenish? And so I got back up and called  
19 back in, and they said yes.

20 You know, I haven't worked there more than a year  
21 and a half, but as a nurse in Yakima, I've never  
22 transferred someone to Toppenish that was having cardiac  
23 telemetry -- you know, needed that. And, oftentimes,  
24 people do not need any more intervention, I have to be  
25 honest and say that, you know, and they are discharged





1 the next day, but if this is already happening within 24  
2 hours, what's going to happen is my fear.

3 MR. DALMAT: Thank you for your testimony.

4 THE WITNESS: Thank you very much.

5 THE COURT: Again, I just ask that folks on the  
6 phone, please press the mute button on your phone. We  
7 can hear you. I know you're busy, but everyone in the  
8 courtroom can hear what you're talking about and we'd  
9 appreciate it if you mute it.

10 Mr. Maizel?

11 MR. MAIZEL: Thank you. I have no questions.

12 MR. DALMAT: That's all the witnesses I have on  
13 direct, and I await Your Honor's instructions on how to  
14 proceed with Dr.- -- with Mr. Gallagher.

15 THE COURT: I think it's appropriate to -- you had  
16 requested an opportunity to cross-examine Mr. Gallagher,  
17 and I think it's perfect to do that now and then if  
18 Mr. Maizel has any other witnesses he'd like to call  
19 today, we'll do the direct cross and redirect with him.

20 Mr. Gallagher, could you please come on up?

21 JOHN MICHAEL GALLAGHER,  
22 called as a witness, and having been first duly sworn,  
23 testified as follows:

24 THE COURT: Mr. Gallagher, I have a couple of  
25 questions for you. You submitted a declaration in



1 support of the closure motion on --

2 UNIDENTIFIED SPEAKER: The person tapping, we can  
3 hear you?

4 THE COURT: Do you remember that in the  
5 declaration?

6 THE WITNESS: Yes, sir.

7 THE COURT: Everything in your declaration is true,  
8 to the best of your knowledge when you submitted it,  
9 right?

10 THE WITNESS: That's correct.

11 THE COURT: Is that anything about your January 3rd  
12 declaration that you believe to be untrue that could --

13 UNIDENTIFIED SPEAKER: The one -- the one talking  
14 about the spin class, we can hear you.

15 THE COURT: The declaration is admitted in  
16 Mr. Gallagher's direct testimony, and Mr. Gallagher is  
17 now available for cross-examination.

18 Mr. Dalmat?

19 MR. DALMAT: Thank you, Your Honor.

20 EXAMINATION

21 BY MR. DALMAT:

22 Q. Morning. Thank you for being here today. You've heard  
23 testimony from a number of witnesses and I'd like to  
24 begin with Sister Fe. Prior to today, did you have an  
25 understanding that the hospital -- that Regional



1 Hospital went back to 1891 here in Yakima?

2 A. Yes.

3 Q. And do you agree with her characterization that the  
4 mission of the hospital was to serve the poor and  
5 vulnerable communities, both here in Yakima and also in  
6 the greater valley region?

7 A. I believe that that's the mission that the sisters  
8 started the hospital with, yes.

9 Q. And is that mission carried forward to today, or to last  
10 week?

11 A. There's a separate mission statement that the  
12 organization has, but that's to take care of the  
13 community.

14 Q. At any point in time, did Regional under Astria disavow  
15 its prior mission of taking care of the most poor and  
16 most vulnerable people here in Yakima?

17 A. That's not in our mission statement.

18 Q. So is the answer no?

19 A. How can you disavow something that's not in your mission  
20 statement?

21 Q. I'm just saying, did Astria ever take a position, "We  
22 are no longer committed to serving the poor people of  
23 Yakima"?

24 A. I don't understand the question because that's -- the  
25 sisters had a separate mission, and when they sold it to



1 HMA after the faltering business, then -- then they got  
2 acquired by CHS, and then we tried to come in and take  
3 over the organization. We had a mission to serve the  
4 community. Specific individuals weren't indicated in  
5 that mission.

6 Q. If I may, I'd like to approach and pass up an exhibit?

7 THE COURT: What are you showing?

8 MR. DALMAT: Something off Astria's website.

9 THE COURT: Do you have a copy for Mr. Maizel?

10 MR. DALMAT: Would you like a copy?

11 THE COURT: If you're not moving to admit it,  
12 you're just going to talk about it.

13 BY MR. DALMAT:

14 Q. Do you recognize this document?

15 A. No. But I see that it's printed out from the website.

16 Q. The website that you're referring to is Astria Health;  
17 is that correct?

18 A. It says down here,

19 "https://www.astria.healthorg/about" --

20 THE COURT: I don't think you need to read it all,  
21 Mr. Gallagher. It's off Astria's website.

22 THE WITNESS: Very good.

23 BY MR. DALMAT:

24 Q. Do you have any reason to believe that this is not an  
25 authentic copy of a page off of Astria's website?



1 A. I do not have a -- any reason to believe so.

2 Q. Okay.

3 A. Yesterday, though --

4 MR. DALMAT: I would move the admission of this as  
5 WSNA Exhibit 1.

6 THE COURT: Mr. Maizel?

7 MR. MAIZEL: (Inaudible.)

8 THE COURT: I think it just goes to the general  
9 underpinning of the motion. The Court will admit the  
10 exhibit.

11 BY MR. DALMAT:

12 Q. Mr. Gallagher, could you read the first sentence under  
13 "Community needs assessment"?

14 MR. MAIZEL: Your Honor, the document speaks for  
15 itself.

16 THE COURT: That's a fair objection. The  
17 document's in evidence now so he doesn't need to read  
18 it, but you can quote it.

19 MR. DALMAT: Well, we'll try it this way.

20 BY MR. DALMAT:

21 Q. I'll read this and please let me know if I've read it  
22 incorrectly.

23 "As a nonprofit healthcare organization, Astria  
24 Health considers it our responsibility to help  
25 improve the health of our community, the Yakima



1 Valley and the entire region."

2 Do you see that?

3 A. Yes.

4 Q. Did I read that correctly?

5 A. Yes.

6 Q. And do you see the date on the top left corner of the  
7 document?

8 A. Yes.

9 Q. That dates reads January 13th, 2020. Did I read that  
10 correctly?

11 A. Yes.

12 Q. Do you agree that the sentence that I just read to you  
13 correctly states at least one aspect of the mission of  
14 Astria Health?

15 MR. MAIZEL: (Inaudible.)

16 THE COURT: (Inaudible.)

17 THE WITNESS: I think the sentence speaks -- speaks  
18 for itself.

19 BY MR. DALMAT:

20 Q. Right. I'm asking if that accurately reflects your  
21 company's mission in whole or in part?

22 A. Overall, yes, sir.

23 Q. And --

24 THE COURT: What are you showing him now?

25 (Inaudible.) Mr. Maizel?



1 MR. MAIZEL: Your Honor, I don't know  
2 (unintelligible.) I don't know what the question is.

3 MR. DALMAT: This is another document. The  
4 resolution is about the closure of the hospital.

5 THE COURT: Okay. You can approach and show it to  
6 him. I think you're moving it.

7 BY MR. DALMAT:

8 Q. Were you aware that WSNA served discovery requests on  
9 the debtors over the weekend?

10 A. I learned of that, that's correct.

11 Q. Okay. And subject to objections asserted by Astria,  
12 your company produced at least some response to some of  
13 those?

14 A. That's my understanding yes, sir.

15 Q. On the back of the document I handed you is a document  
16 marked Astria 1 through 12. Do you see that?

17 THE COURT: I just ask the folks, again, please try  
18 and keep your phones on mute. I think we can hear a kid  
19 having an entertaining time. So please mute your  
20 phones, if you can.

21 THE WITNESS: In the footnote, is that what you're  
22 referencing?

23 BY MR. DALMAT:

24 Q. At the back, there's a document -- right. It's the  
25 bottom right of the page, sir.



1 A. Okay.

2 Q. And do you recognize those documents?

3 A. I do.

4 Q. What are they?

5 A. They are the unanimous written consent of the board of  
6 trustees.

7 Q. Of who?

8 A. Regional Medical Center, Astria Health.

9 Q. And I think what you just described is what covers page  
10 1 through 5; is that correct?

11 A. Yes, sir.

12 Q. And then on page 6 through 12, there's another set of  
13 documents. Do you see that?

14 A. Actually, I describe both of them in the same context.  
15 These are two different documents, 1 through 5, and 6  
16 through 12, two separate documents for two separate  
17 resolutions.

18 Q. Right. One through 5, I think you testified was the  
19 resolution by Astria Health; is that correct?

20 A. Actually, I testified that 1 through 12, as you asked,  
21 was one for Astria Health and one for their medical  
22 center. So I acknowledge 1 through 5 is for Astria  
23 Health, and 6 through 12 is to the medical center.

24 Q. Perfect.

25 MR. DALMAT: I'd like to move the entire document





1 as Exhibit 2.

2 THE COURT: These discovery responses and attached  
3 trustee resolutions will be admitted as Exhibit 2.

4 BY MR. DALMAT:

5 Q. So I'd like to focus you initially on what's marked as  
6 page 1 in the bottom right. We lawyers call those  
7 things Bates stamps, so that's what I'm referring to.

8 Let me know when you're with me on Astria 1?

9 A. I'm there.

10 Q. Okay. And at the very bottom of the page, I'm going to  
11 read it and let me know if I read it incorrectly, okay?

12 "As now therefore be it resolved, that in the  
13 judgment of the board, it is necessary, advisable  
14 and in the best interest of this company, having  
15 considered the charitable mission of the company as  
16 well as the interest of patients, staff, creditors  
17 and other interested parties, that the officers of  
18 the company, including John M. Gallagher, are  
19 authorized to, if necessary, but not required to,  
20 cease operations of the medical center."

21 Did I read that correctly?

22 A. Yes, sir.

23 Q. Now, I want to focus you on the particular portion there  
24 that refers to the charitable mission of the company.

25 Is that the mission that we've been discussing so far?



1 A. I think that's a 501(c)(3) nonprofit charitable mission  
2 component.

3 Q. Okay. And is your understanding of that mission that  
4 you just described different from the mission that we  
5 have been discussing so far?

6 A. As I understand it, yes.

7 Q. Okay. And how, in your view, does the closure of  
8 Regional advance the mission to serve the poorest of the  
9 poor in one of the poorest areas of the state?

10 MR. MAIZEL: (Inaudible.)

11 THE COURT: Thank you, Mr. Maizel.

12 Maybe reword your question, please, Mr. Dalmat.

13 MR. DALMAT: I'll reword it.

14 BY MR. DALMAT:

15 Q. You said you had -- that in passing this resolution to  
16 close Regional, you and the other members of the board  
17 of trustees considered the charitable mission of the  
18 company, and I believe that that's the same mission that  
19 we've been discussing, but tell me if I'm wrong.

20 And so my question is how, in fact, did you  
21 consider that mission when you decided to close  
22 Regional?

23 A. So the mission of the overall organization is to ensure  
24 delivery of care to the community. One of the biggest  
25 challenges that we ran into with the medical center was



1 the continued operating losses of the facility. The  
2 facility had continued to lose money since acquisition,  
3 unfortunately, to the point of the company putting about  
4 \$40 million into -- as losses, lost revenue, lost  
5 dollars into the hospital to try to keep it supported.

6 The problem and the situation that presented itself  
7 is -- as put into testimony and documents that have been  
8 presented to the Court, and were considered by the  
9 Court, were that the company was attempting to obtain  
10 additional financing through lenders, which the lenders  
11 were not willing to provide us additional financing due  
12 to the fact the hospital continued to lose so much  
13 money. Then we were attempting to find a partner,  
14 someone who might take the hospital over and operate the  
15 hospital. I made personal calls to individuals to see  
16 if they would be willing to do so. We had engaged  
17 investment bankers in order to go out and comb the  
18 country looking for partners, looking for folks willing  
19 to take the facility on.

20 Unfortunately, the economics of the hospital were  
21 so challenging, that when it came down to it, no one was  
22 willing to come to the table with significant resources  
23 enough to save the hospital. And, unfortunately, we  
24 were stuck with a situation where the company continued  
25 to burn through cash in the amount of about 3- -- over



1       \$3 million a month, specifically November and December,  
2       to where the choices were minimal. We had no money.  
3       Nobody would lend us any more money from outside sources  
4       in terms of refinance because of the ongoing operation  
5       of the hospital. We couldn't find a partner in order to  
6       take the facility on, and so we were stuck with a --  
7       between a rock and a hard place on decisions as an  
8       organization.

9           The other two hospitals and the company continued  
10       to improve or produce revenue that we had used for the  
11       last 28 months to support Yakima, and it was to the  
12       point where if we didn't do something with the facility,  
13       that it could endanger the entire health system and we  
14       could have three failing hospitals. So as I --

15 Q. If I may interrupt you there. I'm curious as to whether  
16       you did any analyses on how much longer the other  
17       cost -- the other hospital components of Astria  
18       continued to subsidize Regional before your ability to  
19       secure extra financing or alternative transactions would  
20       close?

21 A. We pretty much took it right up to the end.

22 Q. Have you produced to us any evidence of that.

23 A. I'm sorry, what?

24 Q. The analyses that you just referred to that, in your  
25       view, went all the way up to the end, I am wondering



1           whether that's been produced to the court.

2   A.   Well, I think there are documents in the monthly  
3       operating reports that were produced for the court in  
4       the bankruptcy process. All that information has been  
5       reported in the monthly operating reports.

6   Q.   My question was specifically about your projections  
7       about how much longer the hospitals could continue to  
8       subsidize Regional before your options ran out. That  
9       analysis that you just testified that you conducted,  
10      that's not in the monthly operating reports, is it?

11   A.   I don't think so.

12   Q.   So where is it?

13   A.   I'm sorry?

14   Q.   Where is it? Where is that analysis that you just  
15      described?

16   A.   In internal documents. I don't understand what you're  
17      actually asking for.

18   Q.   Have you produced those documents to WSNA?

19   A.   I don't know that that was --

20   Q.   Well, it was requested. I'm asking if you produced  
21      it?

22           THE COURT: So, Mr. Dalmat, couple of things.  
23       There are projections and financial models including for  
24       the financing facility that show operating losses going  
25       out in the future. There was a hearing here in December



1 at which the creditors committee opposed my improving  
2 new financing beyond the end of the year on the -- they  
3 were concerned with the financing of the losses. If you  
4 look at the materials that were filed in connection with  
5 the hearing.

6 The other observation, and Mr. Maizel can speak for  
7 himself at the appropriate point, is that I imagine some  
8 of the deliberations that Mr. Gallagher is describing  
9 probably were with counsel, so they would be protected  
10 by attorney/client privilege, but I don't want to answer  
11 for Mr. Gallagher, but I just kind of do want to help  
12 move things along. So --

13 BY MR. DALMAT:

14 Q. So let me ask a more specific question then.

15 Did any of your analyses take into account that  
16 likelihood that rival gangs shoot one another if  
17 Memorial were the only hospital with an ER in town?

18 MR. MAIZEL: (Inaudible.)

19 MR. DALMAT: It's quite relevant because he's  
20 testified to the mission of the organization, and his  
21 own closure resolution says that he completed the  
22 mission of the organization when determining to close,  
23 and this -- and the mission is to serve the healthcare  
24 needs of this community. I think it's relevant.

25 THE COURT: Mr. Maizel, go ahead.



1 MR. MAIZEL: Your Honor, (inaudible.)

2 THE COURT: I'll give you one. So is this the one  
3 you want to ask him?

4 MR. DALMAT: No. I'll ask about the PCI.

5 BY MR. DALMAT:

6 Q. Did you consider that you -- one of the justifications  
7 for your motion was the availability of PCI procedures  
8 at Memorial? Did you consider the effect of not having  
9 open heart surgery on the ability of Astria to serve the  
10 healthcare needs of this community and this region once  
11 the risk for not having open heart to back up PCI went  
12 away?

13 A. Yes, we did. We actually considered how Memorial had  
14 put in for their approval for elective PCI and actually  
15 have an agreement with Cadillac Regional Medical Center  
16 in Tri-Cities for their open heart backup. They didn't  
17 actually use us for their open heart backup, which is --  
18 which the Department of Health indicated by their  
19 approval, if that was acceptable. But even for the  
20 prior year or so, Virginia Mason Memorial had sent  
21 roughly 100 to 120 open heart surgeries out of the  
22 community to other facilities, along with other  
23 closed-head injuries for neurosurgery, sent them out of  
24 the community instead of sending them to Astria Regional  
25 where they could have had intervention right there. So



1 we did consider that, thank you.

2 Q. And how far away is Cadillac from -- from Memorial?

3 A. Seventy-three miles from Regional, so I think Memorial  
4 is 1.7 miles from Regional, so 74.7 miles.

5 Q. And you weren't concerned about that distance in terms  
6 of backing up cath lab procedures; is that right?

7 A. No, I was concerned, but the concern that was, I guess,  
8 relieved by the fact that the Department of Health had  
9 approved Cadillac to be the open heart backup for the  
10 elective PCI program at Memorial.

11 Q. Where was the -- or this resolution that the board of  
12 trustees of Astria Health passed, that was December 3rd,  
13 2019; is that right?

14 A. That's correct.

15 Q. That's when you first received authority to close the  
16 hospital?

17 A. That's correct.

18 Q. What efforts, if any, did Astria take to inform the  
19 employees, the staff, the public of its intentions to  
20 close between December 3rd and January 8th when this  
21 became public?

22 A. The company, through the investment bankers, working to  
23 try to secure a partner for the facility, and this was  
24 in anticipation and continuing to work with lenders to  
25 obtain refinancing.





1 Q. My question was about notice to the employees. Did you  
2 provide such notice during that period?

3 A. We did not.

4 Q. What about notice to the staff? Did you provide notice  
5 to the staff during that period?

6 A. There was no notice to provide because we were waiting  
7 to hear from other partners or refinance, so to provide  
8 notice on something that we were hoping to get positive  
9 feedback on was not appropriate.

10 Q. Did you think it was prudent to work during that period  
11 with nurses, with doctors to develop a plan for how the  
12 healthcare needs of this community could function in the  
13 event of a transition of a closure?

14 MR. MAIZEL: (Inaudible.)

15 THE COURT: I just ask the -- please let the  
16 witness answer the question.

17 THE WITNESS: Would you repeat the question?

18 BY MR. DALMAT:

19 Q. Yeah. The question was whether you thought it would be  
20 prudent to work with the experts within Regional, the  
21 doctors and the nurses and the other staff, to develop a  
22 plan for how patients would be adequately cared for in  
23 the event that Regional needed to close?

24 A. We actually had a conversation with the Washington State  
25 Hospital Association, with the Department of Health and



1 other leaders from hospitals in their region.

2 Q. My question was directed about conversations with  
3 doctors, nurses and staff. Could you answer that  
4 question, please?

5 A. No, we did not.

6 MR. MAIZEL: (Inaudible.)

7 (Applause.)

8 THE COURT: Can we just please keep everything  
9 steady and safe.

10 Mr. Dalmat, ask your next question.

11 MR. DALMAT: Certainly, Your Honor.

12 BY MR. DALMAT:

13 Q. Do you have in front of you your declaration? If not, I  
14 can provide you a copy.

15 A. Well, I only have what you provided.

16 Q. Okay.

17 (Inaudible.)

18 THE COURT: (Inaudible.) I'm familiar with it. It  
19 might help you.

20 Mr. Maizel, you have a --

21 MR. MAIZEL: Yes, Your Honor. (Inaudible.)

22 THE COURT: (Inaudible.)

23 MR. DALMAT: Yes, sir.

24 BY MR. DALMAT:

25 Q. Sir, what I've handed you is a document that contains



1 both the motion and then your declaration is attached at  
2 the end. So if you turn to page 27 of your  
3 declaration -- or, sorry, page 27 of the document begins  
4 with your declaration. And let me know if that is, in  
5 fact, the declaration that you previously attested to?

6 A. That's correct.

7 Q. Okay. If you would please turn to paragraph 15 of the  
8 declaration.

9 A. Yes, sir.

10 Q. And on line 12 there, the lines are numbered on the  
11 left-hand column, the line involves -- there's a  
12 sentence that reads -- and when I read it, I'm going to  
13 substitute Memorial for VMMH, but I think that's the  
14 same thing.

15 "It is important to note that the debtors had  
16 believed the Yakima market was too large for  
17 Memorial's emergency room, and efforts to fund the  
18 medical center were part of the medical center's  
19 nonprofit mission of serving the community."

20 Did I read that correctly?

21 A. Continuing on --

22 Q. Sorry. Did I read that correctly?

23 A. Correct.

24 Q. And medical center there refers to Regional; is that  
25 correct?



1 A. Correct.

2 Q. Okay. And then you wanted to talk about the next  
3 sentence, which says:

4 "However, debtors are reassured by communications  
5 from the chief executive officer of Memorial to its  
6 employees and medical staff, (1) indicating  
7 Memorial has been planning for the closure of the  
8 medical center since November of 2018, and (2)  
9 expressing Memorial's ability to provide increased  
10 volume of healthcare services resulting from the  
11 closure of the medical center."

12 Did I read that correctly?

13 A. Correct.

14 Q. Does any of the testimony that you heard today about  
15 rival gangs, about physical space constraints, about the  
16 need for backup for open heart surgery, about the need  
17 for local neurosurgery change your view of whether  
18 Memorial had been fully prepared to handle the exodus of  
19 healthcare needs once Regional closed with no notice to  
20 the public?

21 MR. MAIZEL: Objection, Your Honor. Misstates the  
22 testimony (inaudible.)

23 THE COURT: Mr. Gallagher, I'm going to let you  
24 answer. Whether the testimony today is outside the  
25 range of the possible (sic) that the debtors' business



1       deciders took into account or whether business things  
2       that they couldn't have contemplated happening, I think  
3       that's a fair question in advance for Mr. Maizel.

4               MR. MAIZEL:  (Inaudible.)

5               THE COURT:  Okay.  And I'll reframe it in that way,  
6       and if you're able to answer, Mr. Gallagher, please do  
7       so.

8               THE WITNESS:  Most of the testimony that was  
9       presented seemed to be things that we had thought about  
10      and discussed.

11      BY MR. DALMAT:

12   Q.  And they didn't concern you in terms of the charitable  
13      mission of Astria Health to serve the needs of the  
14      poorest and the most vulnerable in this city in this  
15      region?

16   A.  Actually, the other two hospitals that we operate take  
17      care of the -- a large portion of the care of the less  
18      fortunate and vulnerable in the community.

19              MR. DALMAT:  Can I get a minute so I can confer  
20      with my co-counsel?

21              (Pause in the proceedings.)

22   BY MR. DALMAT:

23   Q.  Are you aware that as of 11:23 a.m., the Department of  
24      Health has not formally deactivated the medical license  
25      to operate Regional?



1 A. No. I've been in court.

2 Q. Okay. Do you have an understanding, one way or another,  
3 of whether Regional's medical license to operate is  
4 active today?

5 A. We sent a letter to the state to relinquish the license  
6 as the last patients were transferred out of the  
7 facility yesterday.

8 Q. All right. And when did you send that letter, what time  
9 of day?

10 A. This morning.

11 Q. What time this morning?

12 A. Roughly 8:15.

13 Q. And if I told you that recent search from the Department  
14 of Health, that they have not formally deactivated  
15 Regional's medical license to operate, would you have  
16 any basis on which to disagree with me?

17 A. No.

18 MR. DALMAT: I have no further questions at this  
19 time.

20 THE COURT: Mr. Maizel, any redirect?

21 EXAMINATION

22 BY MR. MAIZEL:

23 Q. Now, Mr. Gallagher, how much were the financial losses  
24 since the hospital was acquired by Astria Health?

25 A. Roughly \$40 million.



1 Q. Were those losses on a monthly basis declining or  
2 increasing over the last three months?

3 A. Increasing.

4 Q. What were the losses in December?

5 A. Roughly \$2.8 million of EBITDA.

6 Q. And in an effort to -- did you reach out to state  
7 officials to try to get emergency funding or, you know,  
8 grants or other kinds of funds to sustain the operations  
9 at this hospital?

10 A. We reached out to look for any additional funding that  
11 we could to help either bridge us to another partner,  
12 but it was a challenge to obtain additional funding due  
13 to the continued losses of the operation.

14 Q. So your testimony earlier that the patient population  
15 was heavily dependent on government pay, Medicare or  
16 Medicaid, do you recall that testimony?

17 A. Yes, sir.

18 Q. Is that consistent with your own knowledge of the  
19 hospital's patient mix?

20 A. Yes. Actually, it's gotten worse.

21 Q. What is that? What does the percentages of the patient  
22 mix at this hospital look like?

23 A. Currently, it's less than 5 percent commercial. It's 95  
24 percent Medicare and Medicaid on an inpatient basis.

25 Q. When you say "commercial," that means commercial



1 patients such as paid by Blue Cross, Blue Shield or  
2 Aetna?

3 A. Correct.

4 Q. Does Medicare cover the cost of a patient being treated  
5 in the hospital? Do they pay 100 percent of the costs  
6 the hospitals incur in treating patients  
7 statistically?

8 A. Statistically, no.

9 Q. Do you know -- are you aware of what percentage, you  
10 know, generally across the country they pay of the  
11 percentage of the patient's care costs to the  
12 hospital?

13 A. Typically, it runs around 95 percent and a sequestration  
14 on additional 10 percent impact.

15 Q. So is it fair to say, then, for every one of those  
16 patients the hospital sees -- treats, it loses money?

17 A. Correct.

18 Q. And what about -- I'm sorry. Was it -- Medicare or  
19 Medicaid about the same or are they different?

20 A. Medicaid typically pays less than Medicare. It's  
21 typically below cost reimbursement as well.

22 Q. And any idea what the percentages look like there?

23 A. Probably closer to 85 percent of cost.

24 Q. So, again, every Medicaid patient the hospital treats,  
25 it loses money on; is that fair?





1 A. Typically, yes, sir.

2 Q. And are you aware of the obligations of the hospital as  
3 debtor-in-possession in regards to paying expenses as  
4 they come due?

5 A. Yes, sir.

6 Q. And is it your understanding that the hospital -- the  
7 debtor-in-possession, Astria, the board, are fiduciaries  
8 to their creditors?

9 A. Yes, sir.

10 Q. With the hospital, would you as the CEO of the hospital,  
11 Regional -- the hospital chain, would you believe that  
12 it was in violation of that fiduciary duty to incur  
13 vendor costs for supplies or goods that you could not  
14 pay?

15 A. That would not be appropriate.

16 Q. And what about incurring salaries to nurses or other  
17 staff that you could not pay?

18 A. That would not be appropriate.

19 Q. What would be the impact of continued operations of this  
20 particular hospital on the overall company's ability to  
21 maintain operations at Sunnyside, Toppenish?

22 A. It jeopardized maintaining operations at those two  
23 facilities.

24 Q. Now, you said earlier in your cross-examination that  
25 there was -- that you had taken the -- the closure up to



1 the end.

2 When you -- do you recall what the financial  
3 evaluations looked like for January for this -- for the  
4 overall entity in terms of whether it had sufficient  
5 cash on hand to operate in spite -- in light of expected  
6 losses?

7 A. All I can say that at the placement hearing, we had to  
8 ask for additional funding in order to ensure that we  
9 could continue the operations for a period of time until  
10 we could see if we could find a partner. So from that  
11 perspective, it was really getting tight.

12 Q. You were -- you were present in court during the last  
13 status conference and the financing hearing; is that  
14 correct?

15 A. That's correct.

16 Q. Do you recall what the unsecured cred- -- first of all,  
17 do you know what the unsecured creditors committee's  
18 role is in this case? What is the -- why -- why is  
19 there an unsecured creditors committee, and what do they  
20 do?

21 A. They represent the unsecured creditors and their  
22 interest in the case.

23 Q. And would that include nurses, for example, who were  
24 owed monies prepetitioned by the debtor?

25 A. It would be.



1 Q. And it would include all the vendors of goods and  
2 services, wouldn't it?

3 A. That's correct.

4 Q. And do you recall what position the unsecured creditors  
5 committee took about continuing to subsidize the losses  
6 at this particular hospital?

7 A. Yes.

8 Q. And what was that position?

9 A. The unsecured creditors committee was arguing with the  
10 Court that we should not continue to spend money to  
11 support the facility because it was losing so much  
12 money.

13 Q. So let me ask you some -- there's been a lot of  
14 questions directed to a lot of witnesses about the  
15 continued necessity for the hospital to exist to provide  
16 patient care, so let me ask you some questions about  
17 that.

18 Does Astria Health have a supervisory role in the  
19 statewide healthcare system that makes it responsible  
20 for providing healthcare in the community?

21 A. No.

22 Q. Are there state regulatory agencies that do have that  
23 role?

24 A. Yes.

25 Q. Have you communicated with those state regulatory



1 authorities in the process of closing this hospital?

2 A. Yes.

3 Q. Has any of them told you not to close the hospital?

4 A. No.

5 Q. Were you -- you were on the phone during the hearing on  
6 the motion to close; is that correct?

7 A. Correct.

8 Q. And were the regulatory authorities on the call on the  
9 hearing that was by conference call that discussed  
10 whether to close this hospital or not?

11 A. Yes.

12 Q. Did any of the regulatory authorities on that conference  
13 call with the Court object to the closure?

14 A. No, sir.

15 Q. Was the patient care ombudsman on that call?

16 A. Yes.

17 Q. And do you know what the role of the patient care  
18 ombudsman is?

19 A. I understand that they provide insight to the Court on  
20 patient care delivery as the facility is going through a  
21 bankruptcy process.

22 Q. Did the patient care ombudsman raise objections to the  
23 closure on that hearing -- at that hearing?

24 A. No, sir.

25 MR. MAIZEL: Your Honor, I have no further



1 questions.

2 THE COURT: If you would like three -- three  
3 questions or so, is that enough?

4 MR. DALMAT: It depends on how long he goes on in  
5 his answers, but I will keep it to five minutes.

6 THE COURT: Yeah.

7 EXAMINATION

8 BY MR. DALMAT:

9 Q. You were asked about various legal obligations that  
10 debtors-in-finance -- debtors-in-possession have. Are  
11 you familiar with the obligation under 28 USC 959 for  
12 debtors-in-possession to follow state, federal and local  
13 law?

14 MR. MAIZEL: (Inaudible.)

15 MR. DALMAT: Same on the other side, yeah.

16 THE COURT: I think to the extent that you have  
17 knowledge of that that's not as a result of discussion  
18 you've had with your counsel, you can answer to the  
19 extent of whatever you know about that resulted in  
20 discussion with your lawyers, I think that would be  
21 protected by the privilege.

22 THE WITNESS: I don't know what you're referencing,  
23 so no.

24 BY MR. DALMAT:

25 Q. Apart from the statutory citation, do you have any view



1       one way or another, of whether a company in bankruptcy  
2       is free to disregard state, federal and local law in  
3       managing its assets in bankruptcy?

4   A.   I would expect they would have to abide by all laws.

5   Q.   Okay.  And that would include, for example, the Medicaid  
6       regulation that requires 15 days' notice to the public  
7       before a closure; is that right?  This was discussed at  
8       the closure hearing that was not open to the public.

9   A.   I would assume so.

10  Q.   Okay.  And -- and you did not comply with their 15-day  
11       notice requirement, did you?

12  A.   No.

13               MR. MAIZEL: (Inaudible.)

14               THE COURT:  You can answer to the extent you have  
15       an answer.  It's a legal matter, if this becomes  
16       relevant, his answer doesn't necessarily bind the estate  
17       or arguments that counsel may make later.  Just -- just  
18       to be clear, this is not a contention interrogatory  
19       that's binding the debtor.  Okay?

20               MR. DALMAT:  No.  It's a question directed to --

21               THE COURT:  It's a question of a lay witness.  I'll  
22       let him answer to the extent he has an understanding.

23  BY MR. DALMAT:

24  Q.   And I think the answer was already given, and it was no;  
25       is that correct?



1 A. Yes. We had discussion on the call with the time line  
2 of the closure being a window that was provided to the  
3 regulators, and we provided that information to them.

4 Q. But not the 15 days' notice to the public; is that  
5 right?

6 A. No, sir, I don't recall that.

7 Q. And, similarly, under state law, there was a discussion  
8 of the pharmacy regulation WAC 246-869-250. You also  
9 did not give the 15 days' notice required under that  
10 provision to the Pharmacy Commission, did you?

11 A. We provided notice to the Pharmacy Commission in --

12 Q. That's the notice until they come in and inspect the  
13 facility to ensure that all the medications were secure?

14 A. Right.

15 Q. Did you give it in 15 days?

16 A. We gave a 15-day notice. They expect to be in in the  
17 next seven to ten days.

18 Q. When did you issue that 15- -- when did you issue that  
19 notice that you just mentioned?

20 A. I can't recall exactly.

21 Q. There was a question that your counsel asked you about  
22 the position that the regulating entities took during  
23 the closed hearing on closure.

24 MR. MAIZEL: Counsel, I'm going to object that --  
25 that -- that hearing was on the Court's telephonic



1 conference line and was publicly available on my court  
2 calendar. There wasn't broad notice given, and I stand  
3 by that decision. I think calling it a closed hearing  
4 is a bit inaccurate. You know, anyone had access to  
5 the -- to the number, they could have called in and  
6 participated on the call.

7 MR. DALMAT: I apologize. Is the lack of notice  
8 hearing sufficient? Can I call it that?

9 MR. MAIZEL: Why don't you just call it the  
10 hearing.

11 MR. DALMAT: Okay.

12 BY MR. DALMAT:

13 Q. The -- at the hearing on the closure plan, there was  
14 discussion on the position that the regulating bodies  
15 took, and you were asked some questions about that. Do  
16 you recall those questions?

17 A. Not off the top of my head, no.

18 Q. Okay. Well, your counsel probably will.

19 Do you recall the ombudsman saying that she had not  
20 had time to look at the details of the closure plan?

21 A. Vaguely.

22 Q. Okay. And that's a similar position that the state of  
23 Washington took, and pretty much every other regulating  
24 entity, that they had not -- they did an approved  
25 closure in principle, but they had not had time to





1       examine in detail more details of the closure plan and  
2       the effect that it would have.

3           Is that your recollection of the positions that  
4       were taken?

5   A.   No.   I would be inferring a lot to assume that.

6   Q.   Okay.

7           MR. DALMAT:   I have no further questions.

8           THE COURT:   Okay.   Mr. Maizel -- okay.   Thank you.

9           Mr. Maizel, do you have any -- Mr. Gallagher, you  
10       are excused.

11          THE WITNESS:   Thank you.

12          THE COURT:   Mr. Maizel, do you have any other  
13       witnesses to call?

14          MR. MAIZEL:   (Inaudible.)

15          THE COURT:   Thank you, Mr. Maizel.

16           So what I'd like to do is take a brief two to  
17       three-minute break, and then hear argument from counsel.  
18       Mr. Dalmat, I'll let you go first and then Mr. Maizel.  
19       I'd like you to keep your remarks to ten -- ten or 12  
20       minutes or so.   After I hear from each of you, I think  
21       we'll take another brief recess, and the Court will sit  
22       back and then I'll rule on the motion.

23           If that -- would that work?

24          MR. MAIZEL:   Yes.

25          THE COURT:   Okay.   So why don't we stand in recess



1 for -- until about 11:50, and then come back, and I'll  
2 hear from counsel, so --

3 MR. MAIZEL: Thank you, Your Honor.

4 (Brief recess.)

5 THE CLERK: Thank you. We're going to go ahead and  
6 get started in just a moment.

7 All rise. The Honorable Whitman Holt presiding.

8 THE COURT: Thank you everyone.

9 Okay. Closing argument. Mr. Dalmat, go for about  
10 ten minutes, and then Mr. Maizel for about ten minutes,  
11 and you don't have to use all of it, but yeah, at least  
12 have a chance. Please go ahead.

13 MR. DALMAT: Thank you for convening this hearing  
14 today, and thank you for giving an opportunity for the  
15 nurses and doctors and other community members to speak.  
16 Again, Darin Dalmat on behalf of the nurses association,  
17 which represents 17,000 nurses throughout the state of  
18 Washington, both as a collective bargaining  
19 representative, but also as a advocate for healthcare  
20 throughout the state. It has those two missions. And  
21 like WSNA, Astria Health has two missions. You heard a  
22 lot from Mr. Maizel about the financial mission of the  
23 organization, but you've also heard a lot from a number  
24 of different witnesses today, including Mr. Gallagher  
25 and Sister Fe, about the organization's charitable



1 mission, and the mission of serving the poorest of the  
2 poor, both in this city and throughout the valley.

3 It is our submission, our fundamental submission  
4 that the exercise of business judgment has to take into  
5 account both of those missions. And that when the  
6 debtors made the decision to close on such short notice  
7 without giving advance warning to the public, to its  
8 employees, to the nurses, to the doctors, that if the  
9 financial part were inevitable, which is not something  
10 we take a position on today, but at a minimum,  
11 responsible discharge of its secondary -- of its primary  
12 obligation, but the other obligation of providing decent  
13 quality healthcare to the most vulnerable people of this  
14 region required it at a minimum to provide adequate  
15 notice to those who are most expert and would most  
16 enable them to make sure that the devastating  
17 consequences to the lives and safety of patients in this  
18 community could be planned for in a responsible way.  
19 And, unfortunately, it's our submission that the lack of  
20 notice and the lack of engagement with those medical  
21 care experts deprive the debtors of that reasonable  
22 exercise of business judgment, and that is the  
23 centerpiece of our argument here.

24 And I think you've heard testimony, both from  
25 Mr. Gallagher and in his declaration, that the decision



1 was purely financial; that although the other hospitals  
2 had been subsidizing Regional for at least two and a  
3 half years, that the decision to shut it down so  
4 abruptly without even minimal notice to folks who could  
5 have more actively engaged the state or other resources  
6 to find additional resources of funding is just beyond  
7 the scope of reasonable business judgment.

8 This Court sits both involved, but also more  
9 importantly in equity, and we would refer Your Honor to  
10 the case of St. Mary's Hospital versus 86 bankruptcy  
11 report of 393 from the Eastern District of  
12 Pennsylvania -- and I have copies here for you -- but  
13 what happened in that case is that the Court enjoined a  
14 closure, and in particular, enjoined the closure of two  
15 departments, the emergency department and the obstetrics  
16 department because of the devastating impact that a  
17 short notice closure would have on poor and people of  
18 color in that case.

19 And we submit that the situation is quite similar  
20 here that, at a minimum, at a bare minimum the emergency  
21 department, the cath lab, the OR and PACU should be  
22 reopened, perhaps on a temporary basis, perhaps for the  
23 60 days that are required under law and that are  
24 required under the Medicaid regulation that was  
25 discussed at the last hearing. That's 42 CFR 489.52 on



1 the 60-day period that it has to be provided to CMS  
2 prior to a closure unless they make an affirmative  
3 finding that -- that there is an adequate plan in place  
4 to -- to deal with impacts on the community. And we  
5 submit for that period for at least for those  
6 departments is necessary here.

7 I know that in their response, the debtors briefed  
8 the question of mootness and standing. I'd like to  
9 address -- well, I'd like to address mootness. I don't  
10 think standing is a serious argument, but if you have  
11 questions about it, I will address that in the limited  
12 time that I have. But in terms of mootness, I don't  
13 have a witness for you, but we have heard confirmation  
14 from the Department of Health that as of 11:00, whatever  
15 it was that I cited earlier, that the medical license  
16 for Regional has not yet been de-licensed.

17 And so it is possible, and this Court has the  
18 equitable authority to reopen the -- at least the  
19 essential departments that are necessary to avoid the  
20 most devastating health consequences that you've heard  
21 from the people most expert on those issues. So it is  
22 not too late, and we ask Your Honor to exercise equity.  
23 If you have questions about standing or a  
24 reconsideration standard, I'd like to address those  
25 before I sit down, but again, I don't think those are



1 serious.

2 THE COURT: Maybe if you can just comment generally  
3 about the debtors' argument about how a collec- -- that  
4 provision of the CPA effectively delegates management  
5 authority to the debtors and how --

6 MR. DALMAT: Absolutely, Your Honor.

7 THE COURT: -- the Union's argument today are, in  
8 effect, in and around that prior delegation. I'd like  
9 to hear your thoughts on that.

10 MR. DALMAT: Understood. And I will directly  
11 answer that, but to answer that question, I first need  
12 to talk about standing under the bankruptcy code, and  
13 then I will move directly to your question.

14 I'm assuming under the bankruptcy code is --  
15 provided under 11 USC 1109(b) which gives any party in  
16 interest, any creditor the ability to raise and appear  
17 and be heard on any issue in a Chapter 11 case. There's  
18 no question that WSNA is a party in interest and a  
19 creditor, we have filed proof of claim and we will have  
20 more proof of claim after the recent events.

21 And so the statutory standing is certainly in  
22 question. Constitutional standing, as you know, comes  
23 from Article III, associational standing, and all we  
24 need is an injury in fact. There's no question there's  
25 an injury in fact, mass job losses to people, and you've



1 heard from Yvette Runyon about her own healthcare and  
2 her own ability to get care in this community. These  
3 are people who have lived here for decades. They are  
4 affected by this bankruptcy, they are affected directly.  
5 And, frankly, it's offensive that Astria Health  
6 suggested that we do not have standing to raise these  
7 questions.

8 As to the management rights clause, that goes to  
9 our rights under the contract. We're not asking you to  
10 enforce the contract through this motion. If we want or  
11 need to do that, we will file a grievance, we'll pursue  
12 labor arbitration, we will deal with it that way, and a  
13 labor arbitrator will decide whether we have a  
14 contractual right to the relief that we would be seeking  
15 in that proceeding. What we're asking Your Honor to do  
16 is to exercise your equitable powers based on what  
17 you've heard today and to order the limited reopening of  
18 the four departments that I mentioned to you, which are  
19 absolutely essential to continuation of coverage in --  
20 at a minimum in an interim period.

21 I hope that answers Your Honor's questions about  
22 standing. If you have any other questions, I want to  
23 answer.

24 THE COURT: I don't.

25 MR. DALMAT: Thank you for your time, and again,



1     thank you for this hearing.

2           THE COURT:   Thank you, Mr. Dalmat.

3           Mr. Maizel?

4           MR. MAIZEL:   Sam Maizel for the debtors.

5           Your Honor, first of all, I want to apologize for  
6     seeming frustrated earlier with at least one of the  
7     witnesses.  I think that as Court is well aware, all I  
8     have done for more than two decades is deal with  
9     financial redistressed healthcare entities.  And it  
10    is -- first of all, it is always disappointing  
11    personally and professionally when we have to close a  
12    hospital.  It is also disappointing that for two  
13    decades, I have had to deal with great institutions like  
14    this one that provide high quality healthcare to  
15    communities that deserve that healthcare, but do not --

16           (Background interference.)

17           UNIDENTIFIED SPEAKER:  Mute your phone.

18           MR. MAIZEL:  -- finance those facilities because of  
19    the way we have --

20           UNIDENTIFIED SPEAKER:  Could you idiots mute your  
21    phone.

22           MR. MAIZEL:  I hope you're not talking to me,  
23    personally, but I suppose that's possible.

24           THE COURT:  No comment on that.

25           MR. MAIZEL:  Your Honor, it is frustrating that we





1 decided in America to deliver healthcare in the most  
2 Rube Goldberg-esque system so that good hospitals like  
3 this and in communities that probably deserve, in some  
4 philosophical sense, to have two hospitals or more  
5 access to healthcare don't have it. Because in America,  
6 for historical and political reasons, we've decided to  
7 deliver healthcare the way we do. And money does  
8 matter. And we're going to talk about that, Your Honor,  
9 but it is my frustration with dealing with difficult  
10 political issues in a court of law that -- that you  
11 heard.

12 First of all, no one disputes that this was a great  
13 hospital for more than a hundred years that provided  
14 important healthcare to the community. Nobody wanted  
15 this on the debtors' side, neither Mr. Gallagher or  
16 Mr. Lane, who is the chief restructuring officer -- came  
17 into this case wanting this result. Certainly, I did  
18 not want this result, but the closure of a rural  
19 hospital or the closure of hospitals generally is not  
20 unique to this case. More than 30 hospitals closed last  
21 year in the United States. More than 30 hospitals filed  
22 bankruptcy to close. There are untold hospitals beyond  
23 that that have closed for financial reasons that did not  
24 seek bankruptcy.

25 The issues that the Court heard discussed today of



1 access to healthcare by the poor or underserved  
2 communities or rural communities is endemic to the  
3 United States, and this Court can't solve that problem.  
4 I urge the people behind me who applauded for various  
5 important points made by witnesses about the delivery of  
6 healthcare to get out and vote, because if they want to  
7 fix the problems they heard described today in the  
8 United States because these problems are not unique to  
9 this case -- if they want to fix these problems, this  
10 court doesn't have the power to do it. The legal system  
11 doesn't have the power to do it. The political system  
12 will have to address it, and until then, courts like  
13 this, lawyers like I will have to grapple with these  
14 very difficult issues about how healthcare is delivered  
15 in America, and more importantly or just as importantly,  
16 who pays for it.

17 The Astria board had a financial obligation to its  
18 creditors. It has two obligations. As a  
19 not-for-profit, it has obligations under state law to  
20 the mission of the not-for-profit. Under the bankruptcy  
21 code, it has a fiduciary obligation to its creditors.  
22 That dual obligations were addressed at the first stay  
23 hearing and have never been ignored by the board of  
24 directors, but they have to balance those.

25 And the problem here, which is clearly laid out in



1 the original declaration that was repeated here in the  
2 testimony of Mr. Gallagher under oath, is that the risk  
3 of the entire system caused by the required subsidies of  
4 this particular hospital made the risk existential to  
5 the entire system. So the financial obligations of  
6 supporting this particular hospital put at risk the  
7 ability to provide care in Sunnyside and Toppenish,  
8 locations and communities that don't have a second  
9 hospital the way Yakima at least has another extingent  
10 hospital even after this closure.

11 Now, yes, there are issues about whether there's  
12 enough hospital delivery, but unless the nurses  
13 association or the many witnesses or the many people  
14 here today have checks to subsidize the -- as the  
15 unrebutted testimony is, the more than \$40 million that  
16 have been used to subsidize the operating losses of this  
17 particular hospital in the last 28 months, or the \$2.8  
18 million losses it suffered in December alone, then --  
19 then the solution is clear. It isn't a good solution,  
20 but under the economics of how we deliver healthcare in  
21 America, it is the only rational business judgment the  
22 debtor could take under the circumstances.

23 And again, Your Honor, as the Court has repeated  
24 both in the opening comments and here, the test is the  
25 business judgment of the debtor. The debtors' board of



1 directors voted both at the regional level, but right at  
2 the hospital level and the parent company level to  
3 authorize the closure if there were no other viable  
4 alternatives. As Mr. Gallagher testified both in his  
5 original direct testimony through a declaration and here  
6 today, the existence of this hospital in the chain  
7 actually made the refinancing of the entire system much  
8 more problematic.

9       There were no -- and remember, Your Honor, it isn't  
10 surprising to say there were no entities willing to  
11 acquire this as a growing concern, this particular  
12 hospital, this hospital has changed the answer  
13 repeatedly because of the financial difficulties. So it  
14 can't come as a surprise to the nurses or anyone else  
15 that this hospital didn't make it financially.

16       Your Honor, under those circumstances, we think the  
17 judgment of the Court in approving the business judgment  
18 of the debtor was correct. I just want to take a couple  
19 of minutes and address the specific comments that  
20 counsel for the Union made.

21       Your Honor, we had a discussion about the impact of  
22 28 USC 5 -- 959 in the hearing on the closure motion.  
23 And what I would do is cite the Court to -- and,  
24 unfortunately, there is an order allowing the closure of  
25 St. Vincent's hospital in Los Angeles that was entered



1 on the 9th of January in similar circumstances.

2 THE COURT: Mr. Maizel, I have seen that. I still  
3 am not sure this is something I need to decide today. I  
4 just --

5 MR. MAIZEL: I -- I'm just responding, Your Honor.

6 THE COURT: Candidly, I don't know that I'm a good  
7 judge for you on this issue if it does become relevant.  
8 I've just -- I've been thinking a lot about this, so I'm  
9 just letting you know, but I don't know that this is a  
10 today issue.

11 MR. MAIZEL: But, Your Honor, I'm responding to the  
12 comment. It wasn't raised in the papers, so we didn't  
13 respond to it in the motion for reconsideration.

14 THE COURT: Okay.

15 MR. MAIZEL: I've just -- I've seen Judge Robles'  
16 memorandum opinion, and I'll stop there.

17 THE COURT: Yes. Let me just -- I don't think you  
18 want me writing this. I'll just say that, and we will  
19 let -- I can be --

20 MR. MAIZEL: Duly noted, Your Honor.

21 THE COURT: -- I can be -- I could be persuaded  
22 later, but I think it would be best not to have me  
23 writing on this.

24 MR. MAIZEL: Your Honor, duly noted.

25 With regard to the reference to St. Mary's, again,



1 a case not cited in the motion for reconsideration, but  
2 luckily, because I do this, St. Mary's -- it is St. Mary  
3 Hospital at 86 BR 393, a bankruptcy decision by  
4 Judge Scholl of the Eastern District of Pennsylvania in  
5 1983, the facts of that case could not be more  
6 different.

7 In that case, the hearing was held, I believe,  
8 within two or three days of the beginning of the case.  
9 And what the Court noted there was that because the case  
10 was so early and the facts about whether there was  
11 someone would buy it or refinance it, or what was going  
12 to happen in the case, the Court in that case granted a  
13 limited stay, and there were comments in the opinion  
14 where the Court even said, "I'm not sure that this will  
15 last for more than 15 days because it's not clear  
16 there's financing."

17 Because in that opinion, he also denied the  
18 debtor-in-possession's request for financing. So it is  
19 completely different to cite to a case where -- by the  
20 way, a unique case, the only case on this issue, where  
21 the judge in the first two or three days of the case  
22 granted a limited stay to make sure the debtor had  
23 explored sale or refinance options. We're -- we're much  
24 further into this case, Your Honor. And the testimony,  
25 the un rebutted testimony is that we have explored those



1 options and they are not available. So I don't really  
2 believe that St. Mary's provides a lot of support for  
3 the Union's position. I'm not going to belabor the  
4 standing point, Your Honor.

5 With regard to the reopening of some departments,  
6 Your Honor, this facility has no patients and virtually  
7 no staff. It is a reality, Your Honor, that the  
8 facility has no patients. The Court entered an order  
9 last week, the debtor executed it. And I want to remind  
10 the Court that the reason the motion was filed under  
11 seal, the reason the Court agreed with it was the risk  
12 of patient safety. That hadn't changed.

13 (Audience boos.)

14 THE COURT: Let Mr. Maizel just finish his  
15 argument.

16 MR. MAIZEL: Your Honor, if you've read the  
17 memorandum opinion in the Verity case, you know that  
18 there the Court cited the patient care ombudsman. The  
19 patient care ombudsman in that case made exactly the  
20 arguments we did about the risk to patient safety of how  
21 you announce these closures.

22 (Inaudible.)

23 THE COURT: I just ask again that you let  
24 Mr. Maizel finish.

25 MR. MAIZEL: Your Honor -- Your Honor, I'll stop at



1     that point. But we -- Your Honor, we believe that the  
2     business judgment of the debtor has been sustained by  
3     the evidence. The risk to the other hospitals and the  
4     considerations of the patient care in the community were  
5     fully described to the board. The board voted  
6     unanimously, both at the hospital level and the regional  
7     level to close these hospitals, and we would ask the  
8     Court to deny the reconsideration.

9           THE COURT: Thank you, Mr. Maizel. The Court is  
10    going to take a couple of minutes. No one -- doesn't  
11    need to get up, stand up, sit back down. Just -- if  
12    everyone just hangs tight, I will be back just in a  
13    couple of minutes, and we'll issue a decision. I just  
14    need a couple of minutes to review my notes.

15           (Brief recess.)

16           THE COURT: Please be seated. I want to thank  
17    everyone who came today, all the witnesses who  
18    testified. It was moving and powerful, and thank  
19    Mr. Dalmat, Mr. Maizel for coming. Mr. Gallagher for --  
20    for testifying as well.

21           This is a horrible situation. This is a situation  
22    nobody wants and nobody likes, and least of all me. I'm  
23    not happy about it. And some of you may -- knew -- may  
24    know I'm the new bankruptcy judge. There was a -- my  
25    predecessor, Frank Kurtz, was the judge when this case





1 was filed, and when I was appointed I said this,  
2 hopefully, will be a great case where we get to  
3 reorganize a local hospital, and that's not happening  
4 and it sucks. There's really no other way to say it  
5 other than it sucks.

6 In part, it's awful. It's awful for the people who  
7 are employed by the debtor. It's awful for the debtor.  
8 It's awful for the Court. It's awful to react on. It's  
9 really horrible. Unfortunately, there's not really an  
10 alternative, and no person or entity can continue to  
11 lose money forever. They just can't. And I was hoping  
12 we'd show up today and there would be Bill Gates -- or  
13 Jeff Bezos would be in the back of the room and we'd  
14 have someone here providing the financing to save this  
15 hospital, but that hasn't happened. And no one more  
16 than me, and I'm sure even -- even the debtors and  
17 Mr. Gallagher wishes that person were here today. And  
18 the debtors have hired professionals who their job is to  
19 go out and find money, to find buyers, to find financing  
20 partners, and I think they've done their best and they  
21 just haven't been able -- haven't been able to do it.

22 So at that point, the question is what should be  
23 done with the hospital that just no one wants to  
24 finance, no one wants to fund on a charitable basis and  
25 no one wants to buy. And the choice is it has to be



1 closed at some point, and it's a reasonable business  
2 judgment, I think, to do that.

3 In fact, and arguably, it would be negligent not  
4 to. There's a decision that another bankruptcy judge  
5 made in connection with shutting a hospital down, which,  
6 you know, nothing any of us want to do. The reason that  
7 the debtors' decision to seek closure of the hospital  
8 was entirely consistent with fiduciary duties imposed  
9 under state law to uphold the hospital's mission of  
10 sustaining public health and welfare. Public health and  
11 safety would be jeopardized if the debtors continued to  
12 admit new patients when they lack the funds to  
13 adequately sustain operations. In fact, the board would  
14 be acting in violation of its fiduciary duties to the  
15 community if it attempted to sustain operating the  
16 hospital despite the lack of sufficient cash to sustain  
17 operations.

18 And that last point really bears emphasis here,  
19 that if Regional is not viable and is simply doomed to  
20 fail at some point, it would be problematic and  
21 imprudent for the debtors to keep it open. And I think  
22 it's particularly true here where it's not just  
23 Regional, but Sunnyside and Toppenish and the only  
24 hospitals that they have in their community, and keeping  
25 Regional operating runs a risk of the entire system



1 crumbling. So I think the debtors have made a  
2 reasonable business decision to close the hospital.  
3 Maybe they could have rode this out better, you know,  
4 that's certainly true, and there may be -- there may be  
5 legal consequences that fall from that or not. People  
6 may assert personal claim, and we will have to alleviate  
7 that down the road. But the Court thinks the overall  
8 decision was a reasonable judgment and the timing was  
9 reasonable.

10 Now, the Court's acutely mindful of the  
11 consequences that this is going to have on a lot of  
12 people. The Court's mindful of the fact that this is  
13 going to have a significant impact on this community.  
14 Yakima is a small city, as in the testimony today said,  
15 this hospital has been a significant part of the local  
16 community care, an employer, a caregiver and economic  
17 participant for over a hundred years. Closing this  
18 hospital has implications for various parties including  
19 all of the nurses, doctors here today, the patients who  
20 had to be moved, the patients who are going to have to  
21 go to Toppenish, the vendors. Again, it's horrible.  
22 It's a horrible result.

23 One thing, judges typically shouldn't personalize  
24 things, but I want to a little bit here. I recently  
25 moved to Yakima from California, and I'm moving my



1 family here, and I intend to live here and I intend to  
2 work here every single day. So on a personal level, I'm  
3 troubled by the fact that we're only going to have a  
4 single hospital, and I'm troubled by the fact that it's  
5 a hospital that's further away and inaccessible to some  
6 members of the community.

7 Again, this is a very, very small consideration,  
8 but I think a year from now while I'm on the bench in a  
9 different matter, I could have a heart attack in this  
10 room. And the Astria hospital is not that far down the  
11 street, and the Regional hospital, I think Mr. Gallagher  
12 has said about a mile -- 7.2 miles away. And as  
13 everyone in the room knows when you're dealing with  
14 medical events, minutes matter. So, you know, this has  
15 small impact on me. We heard testimony about car  
16 crashes. You know, I'm moving my family here. My wife  
17 could be in a very -- a horrible car accident, and I'd  
18 much rather, if I had the personal choice, have two  
19 emergency rooms that she could go to. I get it. I'm  
20 now part of this community. I intend to remain part of  
21 this community and have to live here, and this is not  
22 something that's good for the community. It's not  
23 something that's good for me, for my court staff, for  
24 their families, for anyone in the room. It's -- it's  
25 horrible.



1 I also understand and appreciate the impact on  
2 people who are losing their jobs. One of the worst  
3 things about being a bankruptcy professional that I  
4 dealt with in private practice and I see in this case,  
5 and I'm sure I'll see in other cases in the future, is  
6 that good people who did absolutely nothing wrong are  
7 going to have to lose their jobs and search for new  
8 jobs. And it's happened -- Blockbuster used to be a  
9 viable business that went out of business and they were  
10 thousands of people who were fired. Payless Shoes was a  
11 profitable business that employed lots of people and  
12 things went bad, and they had to shut it down.  
13 Toys "R" Us, another company that no longer exists and  
14 in each of those -- Shopko. There was a Shopko here in  
15 Yakima that last year had to close because, again, that  
16 entire business was liquidating and had to be shut down,  
17 and people lost their jobs, and that's very hard.

18 And it's not something the Court wants to see.  
19 It's not something any judge wants to see. It's not  
20 something anyone in the room wants to see. And I know  
21 people are unhappy about what the debtors did and the  
22 way this was implemented, and what Mr. Gallagher did,  
23 but I read the resolutions that were introduced into  
24 evidence today as Exhibit 2, and what these demonstrate  
25 to me is that these are people who didn't do this



1 quickly, who did this in a thoughtful manner, I'm sure  
2 did this because they had no other choice. I -- and --  
3 and they may not have taken into account all of the  
4 details this -- all of the impact this would have on  
5 every individual member of the Yakima community, but --  
6 but I think they knew it was going to be bad for all the  
7 employees. I think they knew it was going to be bad for  
8 the community. I think they knew it was going to put  
9 strain on the Toppenish Hospital.

10 Again, they may not have known the exact details,  
11 but they knew this was going to be bad, and I don't  
12 think they wanted to do it. I think they did everything  
13 they could reasonably do to avoid this outcome, but  
14 we're -- we're here. And applying the applicable legal  
15 standard, I think this is among the range of reasonable  
16 things that people could do in these circumstances.

17 And Mr. Maizel made some comments about the  
18 delivery of medical care in the United States and in  
19 rural areas that I think are apt and well-taken  
20 comments. You know, the Court would love to have a  
21 printing press or a magic wand where I could fix this,  
22 but I don't. And there's a decent argument that the  
23 structure of the bankruptcy code, when it comes to  
24 hospitals, is -- needs to be fixed. So there's a  
25 subchapter of the bankruptcy code that deals with



1 railroad reorganizations, and there's a specific section  
2 of the bankruptcy code that expressly requires the Court  
3 to protect the public interest in considering whether to  
4 close or dispose of a railroad line. And I think  
5 there's a very, very compelling argument that that same  
6 section ought to exist in the context of medical  
7 bankruptcies, and that the business judgment rule  
8 might -- probably shouldn't be the sole test, but the  
9 Court, like every court, is bound to follow the law, the  
10 legal standard that's applicable here is business  
11 judgment. Not whether I like this, which I don't at  
12 all. Not whether this is good for the community, which  
13 it very clearly is not, not whether this is painful for  
14 everyone in the room, which I know it will be, but  
15 whether this is a reasonable thing to do under the  
16 circumstances.

17 And having considered the entirety of the  
18 circumstances, the history of this case, the testimony  
19 of Mr. Gallagher and the testimony of everyone today, I  
20 remain convinced this was within the range of reasonable  
21 outcomes that the debtors could reach. Again, that  
22 doesn't make it good, and again, there may be  
23 consequences that follow from how the debtors rolled  
24 that out. We'll deal with that another day, if we need  
25 to.



1           So, again, this is hard, and I thank everyone for  
2   coming. And, you know, candidly, I hope we never have a  
3   day like this in this court again during my time on the  
4   bench, but based on the record before me, the Court's  
5   going to deny the motion for reconsideration.

6           Thank you everyone.

7           (Inaudible.)

8           THE COURT: Sure. Why don't you circulate an order  
9   to counsel.

10          Thank you everyone.

11          (The proceedings were concluded.)

12          (End of audio recording.)

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1 STATE OF WASHINGTON )  
 ) s.s.  
2 COUNTY OF SPOKANE )

3 I, Rachel L. Hall, do here by declare  
4 under penalty of perjury under the laws of the  
5 State of Washington that the following is true  
6 and correct:

7           1. That I am an authorized  
8 transcriptionist;

9                   2. This transcript is a true and correct  
10    record of the proceedings to the best of my  
11    ability.

12           3. I am in no way related to or employed  
13 by any party in this matter; and

14           4. I have no financial interest in the  
15     litigation.  
16     parties, nor am I financially interested in the outcome  
17     of the cause.

18           IN WITNESS WHEREOF I have set my hand this 2nd  
19   day of March, 2020.

20

21

22

23

24 RACHAEL L. HALL  
CSR, CRR NO. 3265

25



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