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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. . .

ASTRIA HEALTH, et. al.,

Debtors.

Jointly Administered Under:
No. **19-01189-WLH11**
Chapter **11**

**MOTION FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSE
CLAIM PURSUANT TO 11 U.S.C. §
503(a) AND (b) AND PAYMENT
THEREOF AND NOTICE**

MOTION

Administrative claimant [*Claim Docket No. 621*] and creditor Timothy B. Icenogle, MD ("Dr. Icenogle") files this Motion For Allowance Of Administrative Expense Claim Pursuant To 11 U.S.C. § 503(a) And (b) And Payment Thereof (the "Motion") for post-petition compensation of \$53,000.00 and "tail" insurance coverage or the cost thereof estimated to be \$134,193.00, due and owing to Dr. Icenogle pursuant to the terms of the Provider Employment Agreement between Dr. Icenogle and the Astria Regional Medical Center ("Astria") dated June 29, 2019 (the "Employment Agreement"), attached to the Proof of Claim filed by Dr. Icenogle herein on July 21, 2020 [*Claim Docket No. 621*] in the total amount of

DAVIDSON BACKMAN MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL LIMITED LIABILITY COMPANY

1550 BANK OF AMERICA FINANCIAL CENTER



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1 \$187,193.00. The Motion is filed pursuant to and in accordance with this court's
2 Order (I) Fixing The First Interim Bar Date For Filing Certain Postpetition
3 Administrative Expense Claims And (II) Approving The Form Of Notice Of The
4 Administrative Expense Claims Bar Date entered on June 17, 2020 [Docket No.
5 1416] ("Claims Order"). In support of the Motion, Dr. Icenogle states and
6 represents as follows:
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8 **Preliminary Statement**
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10 1. On June 29, 2019, Dr. Icenogle and Astria entered into the
11 Employment Agreement where Dr. Icenogle would be employed to perform
12 cardiovascular and thoracic surgery services for Astria. Dr. Icenogle fully
13 performed all of his duties and obligations required under the Agreement.
14

15 2. Dr. Icenogle received an email from Astria on January 17, 2020
16 notifying him that his employment with Astria was terminated effective as of
17 January 17, 2020. Section 5.3 of the Employment Agreement indicates that the
18 parties to the agreement are entitled to sixty (60) days written notice prior to
19 termination absent one of the conditions listed in Section 5.1 of the Employment
20 Agreement. Dr. Icenogle is not aware that any of the conditions set forth in
21 Section 5.1 of the Employment Agreement apply. Therefore, Section 5.3 of the
22 Employment Agreement would apply, and Dr. Icenogle would be entitled to sixty
23 (60) days written notice of termination. Dr. Icenogle was not given sixty (60) days
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1 written notice of termination. Therefore, he would be entitled to sixty (60) days
2 compensation at the rate provided for in Schedule 4.3 of the Employment
3 Agreement and Schedule 4.3. Schedule 4.3 provides that his annual salary is
4 \$318,000.00. Two (2) months compensation under that annual salary would be a
5 total of \$53,000.00.
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7 3. In addition, Section 4.2 of the Employment Agreement provides that
8 Astria will provide “tail” coverage to Dr. Icenogle when his employment ends. To
9 the best of Dr. Icenogle’s knowledge, the “tail” insurance coverage has not been
10 provided to him by Astria. Dr. Icenogle is entitled to that coverage paid for by
11 Astria and it must be included as part of his administrative expense claim. Dr.
12 Icenogle has received a quote for the “tail” coverage that Astria should have
13 provided under the Employment Agreement. The quote indicates that such
14 coverage would cost Dr. Icenogle \$134,193.00. Based on the fact that the
15 Employment Agreement was entered into and performed post-petition, and that
16 Astria and the estate benefited from the services rendered by Dr. Icenogle under
17 the Employment Agreement, Dr. Icenogle is entitled to payment of his claims
18 arising under the Employment Agreement as an administrative expenses claim
19 under the same terms and conditions as other administrative expenses,
20 including, but not limited to payments made to counsel for the Debtors in these
21 jointly administered cases.
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1 **Jurisdiction and Venue**

2 4. The court has jurisdiction over this Motion pursuant to 28 U.S.C. §
3 157 and 1334. This Motion is a core proceeding under 28 U.S.C. § 157(b). Venue
4 is proper under 28 U.S.C. § 1408 and 1409. The relief requested is sought
5 pursuant to 11 U.S.C. § 105 and 503.
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7 **Background**

8 5. On May 6, 2019 (the "Petition Date"), Astria and its affiliates, as
9 debtors and debtors in possession, filed a petition for relief under chapter 11 of
10 the Bankruptcy Code in the United States Bankruptcy Court for the Eastern
11 District of Washington. The Debtors continue in possession of their property as
12 debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy
13 Code.
14

15 6. Astria and Dr. Icenogle entered into the Employment Agreement on
16 June 29, 2019, after the Petition Date. All services performed by Dr. Icenogle for
17 Astria under the Employment Agreement were performed after the Petition Date,
18 and Dr. Icenogle was terminated by Astria without notice after the Petition Date.
19

20 7. Astria owes Dr. Icenogle the sum of \$53,000.00 for compensation
21 under the Employment Agreement and must provide "tail" coverage due under the
22 Employment Agreement or pay Dr. Icenogle the cost equivalent of such coverage,
23 believed to be \$134,193.00. Dr. Icenogle fully performed all services, terms and
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1 conditions under the Employment Agreement and is entitled to full performance
2 from Astria.

3 8. On June 17, 2020, the court entered the Claims Order, which
4 requires any claim for administrative expenses to be filed by July 22, 2020 at
5 4:00 p.m. PST. Dr. Icenogle's claims are timely.
6

7 9. Dr. Icenogle was employed by Astria on June 19, 2019 under the
8 Employment Agreement. All of the services he provided to Astria under the
9 Employment Agreement were after that date. Astria decided to close the facility
10 where Dr. Icenogle was employed and terminate his employment without prior
11 notice to Dr. Icenogle. Section 5.3 of the Employment Agreement indicates that
12 the parties to the Employment Agreement are entitled to sixty (60) days written
13 notice prior to termination absent one of the conditions listed in Section 5.1.
14 None of the conditions set forth in Section 5.1 of the Employment Agreement
15 apply to Dr. Icenogle. Therefore, Section 5.3 would apply and Dr. Icenogle would
16 be entitled to sixty (60) days written notice of termination. Dr. Icenogle was not
17 given sixty (60) days written notice of termination. Therefore, he is entitled to
18 sixty (60) days compensation at the rate provided for in Section 4.3 of the
19 Employment Agreement and Schedule 4.3 attached to the Employment
20 Agreement. Schedule 4.3 provides that his annual salary is \$318,000.00. Two
21 (2) months compensation under that salary would be a total of \$53,000.00. The
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1 services Dr. Icenogle performed for Astria under the Employment Agreement were
2 requested by Astria and benefited the post-petition operations of Astria,
3 including, but not limited to the amounts that Astria was able to charge and
4 collect for the services rendered by Dr. Icenogle under the Employment
5 Agreement. This bankruptcy case was commenced on May 6, 2019. Therefore,
6 the Employment Agreement and all claims thereunder arose post-petition and are
7 entitled to administrative expense priority under Sections 503 and 507 of the
8 Bankruptcy Code. Dr. Icenogle's claim for \$53,000.00 based upon termination of
9 his employment without notice as described above is entitled to administrative
10 claim priority.
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13 10. In addition to the payment of \$53,000.00 for sixty (60) days
14 compensation based on the failure to provide adequate notice of termination as
15 required by Section 5.3 of the Employment Agreement set forth above, Section 4.2
16 of the Employment Agreement provides that Astria will provide "tail" coverage to
17 Dr. Icenogle when his employment ends based on the fact that Astria provided
18 him with "claims-made" coverage while he was employed by Astria. As of the date
19 of this Motion, to the best of his knowledge, Astria has not provided Dr. Icenogle
20 with the required "tail" coverage. Dr. Icenogle is entitled to that coverage under
21 the Employment Agreement. Astria should pay for such coverage for Dr. Icenogle
22 or provide him with the cost of such coverage so he may obtain it himself. Dr.
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1 Icenogle has received a quote from The Doctors Company for his cost to obtain a
2 policy providing such tail coverage for him. The quote he received for such a
3 policy was \$134,193.00. That is the estimated value of the claim for Astria's
4 failure to provide the required "tail coverage." The estimated claim for failure to
5 provide the required "tail coverage" is also entitled to administrative expense
6 priority under Sections 503 and 507 of the Bankruptcy Code for the reasons set
7 forth above as to his \$53,000.00 compensation claim and that amount has been
8 included with the above-described compensation claim for a total administrative
9 expense claim of \$187,193.00.
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12 **Dr. Icenogle's Administrative Claim**

13 11. Pursuant to the Employment Agreement Dr. Icenogle was employed
14 to perform cardiovascular and thoracic surgery services for Astria. The Debtors
15 received the full benefit of the services provided by Dr. Icenogle. The services
16 provided were necessary and required for the Debtors' post-operations and for the
17 financial benefit of the Debtors. Dr. Icenogle provided direct and real benefit to
18 the Debtors' estates and the Debtors, and is entitled to the full benefit of the
19 Employment Agreements as described herein.
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22 12. Dr. Icenogle was promised the benefits under the post-petition
23 Employment Agreement as described herein in return for his services to Astria
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1 and is entitled to allowance and payment of his administrative claims in the
2 amount of \$187,193.00.

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4 **Legal Standard**

5 13. The Bankruptcy Code provides that “the actual, necessary costs and
6 expenses of preserving the estate” are characterized as administrative expenses
7 and are entitled to priority. 11 U.S.C. § 503(b) and § 507(a)(2). Administrative
8 priority is given to post-petition vendors as an inducement to engage in business
9 transactions with a debtor’s estate. *In re TransAmerican Natural Gas Corp*, 978
10 F.2d 1409, 1416, reh’g denied, 983 F.2d 1060 (5th Cir. 1993).

11
12 14. For a claim to qualify for administrative priority, an expense must
13 arise from “a post-petition transaction between the claimant and the debtor-in-
14 possession and the consideration supporting the right to payment must have
15 been supplied to and beneficial to the debtor-in-possession in the operation of its
16 business post-petition.” *In re Hostess Brand, Inc.*, 499 B.R. 406, 411 (S.D.N.Y.
17 2013). The Debtors in this case run a regional hospital and medical center. The
18 claimant Dr. Icenogle provides medical services. There is no dispute that this was
19 a post-petition transaction between Dr. Icenogle and the Debtors. Dr. Icenogle
20 provided consideration in the form of medical services which were not only
21 beneficial to the Debtors, but also critical to the operation of its business.
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1 15. Here, the Debtors were a regional medical center and hospital serving
2 the Yakima community and its residents. The Debtors must operate their
3 bankruptcy estate in accordance with state and federal law and regulation, the
4 expenses incurred to maintain the Debtors' compliance with applicable state and
5 federal health care law are actual and necessary costs of the estate entitled to
6 administrative priority. See *In re American Costal Energy Inc.*, 399 B.R. 805
7 (Bankr. S.D. Tex. 2009) (finding costs incurred by state in connection with
8 plugging unproductive wells under regulatory requirements and administrative
9 expense priority).
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12 16. As required by the Employment Agreement, Dr. Icenogle provided
13 essential medical services to the Debtors which were necessary and required for
14 the Debtors to operate post-petition as a regional medical center under federal
15 and state law. The medical services provided post-petition by Dr. Icenogle were
16 part of operations of Astria under federal and state law, and are thus entitled to
17 administrative expense priority and immediate performance/payment.
18

19 **Payment of Administrative Priority Expense**

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21 17. Dr. Icenogle is entitled to the same priority and payment of his
22 allowed administrative claim as other administrative claims in these jointly
23 administered cases, including the payment of Debtors' counsel and professionals.
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1 11 U.S.C. §105. Dr. Icenogle's services and performance provided income for the
2 Debtors to pay cost of operation and such other administrative claims.

3 **Conclusion**

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5 Dr. Icenogle respectfully requests that the court allow his administrative
6 expense claim pursuant to Section 503(a) and (b) of the Bankruptcy Code as
7 described herein in the amount of \$187,193.00 or for Astria to provide the
8 required "tail" coverage and pay the \$53,000.00 compensation claim. Dr.
9 Icenogle requests immediate payment/performance and for such other relief as
10 the court deems necessary, just, and equitable.

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12 **NOTICE**

13 PLEASE TAKE NOTICE that any opposition to the above Motion must be in
14 writing, must be filed with the Clerk of the United States Bankruptcy Court, 904
15 West Riverside Avenue, Spokane, Washington 99201, and must be served upon
16 the undersigned counsel not later than **twenty-four (24)** days from the date of
17 this Notice. If no objection is timely filed and served, the relief requested may be
18 granted without a hearing.

19
20 Pursuant to Local Rule 2002-1(f)(1) and (2), any objection shall state briefly
21 the grounds therefor. If an objection states no grounds, the Court may strike the
22 objection on ex parte motion of the moving party. The moving party, however,
23 may make such ex parte motion to strike only after the objecting party fails
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1 within seven (7) days, to respond to a request by the moving party for a brief
2 statement of the grounds for the objection. If an objection is filed, and a hearing
3 is set, the opposing party must comply with Local Rule 9073-1(e)(1) and (2),
4 which state, in part, that an opposing party shall serve and file any objections,
5 counter-affidavits, or statements under penalty of perjury or other responding
6 documents no more than three (3) days prior to the hearing on the application or
7 motion.
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9 DATED this 21st day of July 2020.
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11 DAVIDSON BACKMAN MEDEIROS PLLC

12 /s/ Bruce K. Medeiros

13 Bruce K. Medeiros, WSBA No. 16380
14 Attorney for Timothy B. Icenogle, MD
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