

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
PHYSIOTHERAPY HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 13-12965 (KG)
Debtors.)	Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTORS TO PAY PREPETITION CLAIMS OF GENERAL
UNSECURED TRADE CREDITORS IN THE ORDINARY COURSE OF BUSINESS**

Physiotherapy Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "*Debtors*"), respectfully represent:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Physiotherapy Holdings, Inc. (5193); Actra Rehabilitation Associates, Inc. (7806); Alexandria Sports, Inc. (7654); Benchmark Acquisition Corp. (3850); Benchmark Medical Management Company (0335); Benchmark O&P Holdings, Inc. (6848); Benchmark Orthotics & Prosthetics, Inc. (7000); Blue Hen Physical Therapy, Inc. (7267); Cape Prosthetics-Orthotics, Inc. (7914); Carrollton Physical Therapy Clinic, Inc. (2832); Integrity Physical Therapy, Inc. (1075); Keystone Rehabilitation Associates of Warren (8341); Keystone Rehabilitation Systems, Inc. (8380); Keystone Rehabilitation Systems of McMurray (6304); Leesburg Sports, Inc. (4190); MATRIX Healthcare Services, LLC (7344); MATRIX Rehabilitation, Inc. (3147); MATRIX Rehabilitation-Delaware, Inc. (2504); MATRIX Rehabilitation-Georgia, Inc. (4073); MATRIX Rehabilitation-Ohio, Inc. (2505); MATRIX Rehabilitation-South Carolina, Inc. (5603); MATRIX Rehabilitation-Texas, Inc. (9542); Morris Area Rehabilitation Association, Inc. (2043); North Dallas Physical Therapy Associates, Inc. (5331); Northstar Health Services, Inc. (7152); NSHS Services, Inc. (6789); Orthopaedic Services of Paducah, Inc. (3143); PhysioLink Corporation (3705); Physiotherapy Associates Holdings, Inc. (3367); Physiotherapy Associates, Inc. (7193); Physiotherapy Associates-Union Rehab, LLC (0041); Physiotherapy Corporation (3816); Physiotherapy-BMHI Holdings, Inc. (3361); Physiotherapy-BMI, Inc. (4107); Potomac Rehabilitation Services, Inc. (2725); Professional Rehab Associates, Inc. (2393); Progressive Therapy Services, Inc. (8449); Rehab Associates, L.L.C. (9381); Rehab Colorado, LLC (5804); Rehab Missouri, LLC (0587); Rehab Xcel, LLC (0586); Rehabilitation Consultants, Inc. (1166); R.S. Network, Inc. (9104); SMR Banyan Tree, Inc. (6933); Swanson Orthotic & Prosthetic Center, Inc. (2308); The Parks Physical Therapy and Work Hardening Center, Inc. (2926); Theraphysics Partners of Colorado, Inc. (2115); Theraphysics Partners of Texas, Inc. (9976); Therapy Associates of Martinsville, Inc. (1394); Trumbull P.T. Corp. (3855); Wisconsin Prosthetics and Orthotics, Inc. (7815). The Debtors' main corporate address is 855 Springdale Drive, Suite 200, Exton, PA 19341.



Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are sections 363, 503, 507, 1107(a) and 1108 of the Bankruptcy Code (as defined herein), Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2015-2 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”).

Introduction²

4. The Debtors are the largest pure-play providers of outpatient physical therapy services in the United States with a national footprint of 581 outpatient rehabilitation and orthotics and prosthetics clinics located in 29 states plus the District of Columbia. With over 1,500 clinicians managing over 2.9 million patient visits per year, the Debtors provide the entire spectrum of outpatient rehabilitation therapy, including physical therapy, sports and industrial rehabilitation, hand and aquatic therapy, women’s health, pediatric and geriatric programs. The Debtors also provide a comprehensive suite of orthotic, prosthetic and core rehabilitation therapy solutions at each clinic to service the needs of their patients. The Debtors currently employ approximately 3,859 employees and contract with insurers and managed care entities on a local,

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the Declaration of Martin McGahan, Chief Restructuring Officer and Interim Chief Executive Officer of Physiotherapy Holdings, Inc., in Support of First Day Pleadings (the “*First Day Declaration*”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”).

regional and national basis, all reflecting the strength of the Debtors' scale and density as well as their institutional goodwill and sturdy reputation in the outpatient physical therapy market sector.

5. While the Debtors' operations are fundamentally sound and profitable, in March 2013, during the course of their fiscal year 2012 audit, they discovered there had been an overstatement of revenue and profitability. Upon such discovery, the Debtors' board of directors took proactive steps to address the potential impact of the accounting issues, including hiring Kirkland & Ellis LLP as restructuring counsel, engaging Rothschild Inc. as financial advisor, hiring Alvarez & Marsal Healthcare Industry Group as operational and restructuring advisor and forming a special committee to investigate potential claims related to the overstatement of revenue and profitability and to engage Dechert LLP as special counsel.

6. The Debtors, in consultation with their advisors, ultimately determined that it would be necessary for the Debtors to deleverage their balance sheet to right-size their capital structure and more efficiently compete in the outpatient rehabilitation and physical therapy industry. To preserve liquidity while commencing restructuring negotiations with other stakeholders, the Debtors elected to forego the \$12.5 million interest payment on their \$210 million 11.875% senior notes due 2019 (the "*Senior Notes*"). The Debtors' inability to deliver the audited financials and their failure to make the May 1, 2013 coupon payment to the Senior Notes resulted in defaults both under the 2012 credit agreement and the Senior Notes indenture.

7. Starting in May 2013, the Debtors proactively engaged in discussions with their key stakeholders, including an ad hoc committee that currently holds over 90% in principal amount of the Senior Notes and their equity sponsor, regarding potential restructuring alternatives. These collaborative talks resulted in the Debtors negotiating a fully consensual

restructuring transaction that will be implemented swiftly through a “prepackaged” chapter 11 plan of reorganization (the “*Plan*”) and will, among other things, (a) reduce their prepetition funded debt by more than 62%, from approximately \$375 million to approximately \$144 million, (b) provide the Debtors with reasonable, long-term financing and permit additional indebtedness that will enable them to support their go-forward business needs and (c) establish and fund a litigation trust to consolidate and coordinate prosecution of certain claims and causes of action transferred and assigned to the litigation trust.

8. On October 10, 2013, the Debtors entered into a plan support agreement with 100% of their bridge loan lenders, holders of over 90% in principal amount of the Senior Notes, and their equity sponsor and its affiliates, which collectively hold approximately 90% of the outstanding shares of Physiotherapy Holdings, Inc. On the same day, the Debtors commenced solicitation of the Plan. As of the November 8, 2013 voting deadline, 100% of the holders of claims arising under the Debtors’ bridge loan facility and 100% of the holders of Senior Notes claims that submitted ballots, consisting of approximately 99.71% of the holders of Senior Notes in dollar amount, voted to accept the Plan.

9. On the date hereof (the “*Petition Date*”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code to effectuate the Plan, enhance liquidity and solidify their long-term growth prospects and operating performance. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases.

Relief Requested

10. By this motion, the Debtors request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “*Interim Order*” and “*Final Order*,” respectively), (a) authorizing the Debtors to pay prepetition claims of general unsecured trade creditors (the “*Trade Claims*”) in the ordinary course of business, (b) scheduling a final hearing (the “*Final Hearing*”) to consider entry of the Final Order, to the extent a Final Hearing is necessary, and (c) granting such other and further relief as may be appropriate. Because the Trade Claims are unimpaired under the terms of the Plan, filed contemporaneously herewith and as discussed in more detail herein, the Debtors are seeking the relief requested herein merely to ensure minimal disruption to their operations while they effectuate a balance sheet restructuring.

Treatment of Trade Claims under the Debtors’ Prepackaged Plan of Reorganization

A. Plan Overview³

11. The Debtors commenced these chapter 11 cases to effectuate a prepackaged and overwhelmingly consensual balance sheet restructuring. The restructuring is supported by 100% of holders of the claims arising under Bridge Loan Credit Agreement (the “*Consenting Bridge Loan Lenders*”), approximately 99.71% of holders of claims in dollar amount arising under the Senior Notes (the “*Consenting Noteholders*”), and Court Square affiliates that collectively hold approximately 89.98% of the outstanding shares in Physiotherapy Holdings, Inc. (the “*Consenting Shareholders*”). The Debtors submit that the Plan will significantly delever their capital structure, provide the Debtors with reasonable long term financing and access to

³ This Plan Overview is intended only to provide a summary of certain key terms, structure, classification, and treatment provided under the Plan, and is qualified in its entirety by reference to the entire Plan and exhibits thereto.

incremental funding necessary to implement their business plan and provide appropriate operating liquidity, and position the Debtors to more effectively compete in their industry. Holders of Class 3 Bridge Loan Credit Agreement Claims and Class 4 Senior Notes Claims have voted to accept the Plan.

12. Under the Plan, the existing Bridge Loan Credit Agreement (with approximately \$140 million outstanding) will be converted on a dollar-for-dollar basis into an amended and restated 3-year term loan facility (which terms will permit, among other things, the incurrence of additional indebtedness on a pari passu basis of up to \$8 million to address potential post-restructuring liquidity needs). Any non-participating lenders under the bridge loan facility will be paid in full in cash. The \$210 million in principal amount under the Debtors' Senior Notes will be converted into 100% of the new common stock of Physiotherapy Associates Holdings, Inc., subject to dilution for a management equity incentive plan. Holders of allowed Senior Notes claims will also receive a percentage interest in the Litigation Trust (as defined in the Plan).

13. The Litigation Trust will be established and funded on the effective date and pursuant to the Plan to pursue certain claims and causes of action held by the Debtors and their estates, the Consenting Noteholders and the Consenting Shareholders that are transferred and assigned to the Litigation Trust (collectively, the "*Contributed Claims*"). Net proceeds from the Litigation Trust (after deduction for certain costs and expenses of the Litigation Trust and the satisfaction of certain allowed reimbursement and indemnification claims not otherwise released under the Plan) will be distributed as follows: (1) 50% to the Consenting Shareholders; and (2) 50% to the holders of Senior Notes as of the effective date of the Plan, with an enhanced share for Consenting Noteholders who assign their Contributed Claims to the Litigation Trust.

14. The Litigation Trust will also assume any Allowed Non-Subordinated Contribution and Reimbursement Claims (as defined in the Plan). No distributions will be made on account of intercompany claims, or allowed claims that are subordinated pursuant to section 510 of the Bankruptcy Code or other applicable law. All existing interests (other than allowed intercompany interests) will be extinguished and existing interest holders will not receive or retain on account of such interests any property under the Plan.

15. Importantly, under the Plan, all Trade Claims will be unimpaired and reinstated and will be paid in full in cash on the effective date of the Plan or paid in the ordinary course of business when such claims become due and owing, minimizing any disruption to the Debtors' business and maintaining the Debtors' relationships with their trade vendors.

B. The Trade Claims

16. In the ordinary course of operating its rehabilitation clinics, the Debtors incur obligations to various creditors that provide the Debtors with a variety of goods and services including, without limitation, clinical supplies, orthotic and prosthetics components, IT hardware and software, office supplies, cleaning and maintenance services, IT infrastructure services, outsourced billing and collections, professional services, marketing and promotional services, and other goods and services that are necessary for the continued operation of the Debtors' businesses. In addition, the Debtors intend to make all payments due under agreements, including litigation settlements, in the ordinary course when due under the terms of such agreements. Authorizing the Debtors to pay the Trade Claims in the ordinary course of business on the terms set forth herein will minimize any disruption to the Debtors' business and will allow for a smooth and expeditious reorganization in these chapter 11 cases.

17. The Debtors estimate that, as of the Petition Date, they owe approximately \$3.5 million on account of undisputed Trade Claims.⁴ The Debtors are not seeking to pay these amounts immediately, but rather to pay such amounts as they become due and payable in the ordinary course of the Debtors' business. The Debtors believe that payment of the Trade Claims will not create an imbalance of their cash flows because the majority of these obligations have customary payment terms and will not be immediately payable. Additionally, cash held by the Debtors and the cash generated in the ordinary course of their business will provide sufficient liquidity for payment of the Trade Claims.

18. Moreover, as discussed above, the proposed Plan provides for all undisputed Trade Claims (estimated at \$3.5 million), to be paid in full. The Debtors anticipate seeking confirmation of the Plan well within 60 days of the Petition Date. As such, the Trade Claims are unimpaired and the relief requested herein merely expedites the treatment and distribution to the holders of Trade Claims that would otherwise be made at a later date under the Debtors' proposed Plan without inflicting gratuitous damage on the enterprise.

19. As discussed in the First Day Declaration, the Debtors believe that an extended delay in payment of the Trade Claims could seriously undermine their business as operators of rehabilitation clinics by rendering them incapable of fulfilling their obligations to patients at a critical juncture. Furthermore, such a delay would cause an immediate loss of trade credit and the loss of favorable existing payment terms when negotiating upcoming contract renewals with important vendors. The Debtors submit that payment of the Trade Claims will allow them to

⁴ These amounts constitute undisputed Trade Claims due and owing as of the Petition Date. Although additional amounts may be due and owing on account of general unsecured trade claims, the Debtors dispute such claims and/or amounts and reserve all rights to contest such claims and/or amounts.

continue their operations with minimal disruption and preserve their enterprise value for the benefit of their estates, creditors and all parties in interest.

Supporting Authority

A. The Debtors are Authorized to Pay Prepetition Trade Creditors in the Ordinary Course of Business under the Doctrine of Necessity

20. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824-45 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 1107(a), 1108, 363(b), and 105(a) of the Bankruptcy Code.

21. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries charged with "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Inherent in a debtor in possession's fiduciary duties is the obligation to "protect and preserve the estate, including an operating business's going-concern value," which, in certain instances, can be fulfilled "only . . . by the preplan satisfaction of a prepetition claim." *Id.* Indeed, the *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary

duty when the payment “is the only means to effect a substantial enhancement of the estate”

Id.

22. Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., Ionosphere Clubs, Inc.*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).⁵

23. In addition to the authority granted a debtor in possession under sections 1107(a), 1108, 363(b) and 105(a) of the Bankruptcy Code, courts have developed the “doctrine of necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization, *see Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors

⁵ Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit preplan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

where the alternative was the cessation of operations), including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *see also In re Congoleum Corp.*, 362 B.R. 198, 203 (Bankr. D.N.J. 2007) (noting that “payment of the Debtor's critical vendors may be authorized under the doctrine of necessity”).

24. In *Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating that a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *Just for Feet, Inc.*, 242 B.R. at 824-45 (noting that debtors may pay prepetition claims that are essential to continued operation of the business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

25. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs, Inc.*, 98 B.R. at 176; *Just For Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code”, but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims,

pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation”); COLLIER ON BANKRUPTCY P 105.02[4][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

26. If the Debtors are not authorized to honor their obligations to holders of Trade Claims in the ordinary course, the Debtors’ stakeholders may question the Debtors’ ability to maintain “business as usual” operations and relationships with their stakeholders, undermining the Debtors’ ability to succeed in their highly-competitive industry at this critical juncture. If this were to occur, the Debtors’ creditor constituencies would suffer significant harm. In fact, the amount of Trade Claims that the Debtors believe may be satisfied in the ordinary course of business pursuant to the relief requested in this Motion pales in comparison with the amount that such stakeholders stand to lose if the Debtors’ trade vendors refuse to continue doing business with the Debtors in the ordinary course. Accordingly, the Debtors submit that the relief requested is warranted and necessary to provide the Debtors with the ability to achieve a successful chapter 11 reorganization.

27. Conversely, the Debtors’ authority to satisfy the Trade Claims in their ordinary course of business would strengthen the perception among actual and potential counterparties that the Debtors intend to conduct business as usual and without disruption to the Debtors’

operations. Moreover, no parties in interest will be prejudiced by the relief requested herein because the undisputed Trade Claims are unimpaired and will be paid in full under the terms of the Plan. The relief requested herein merely expedites the treatment of and distribution to the unsecured creditors that hold Trade Claims which would otherwise be made at a later date under the Plan.

28. Importantly, the Debtors are not seeking authority to pay all Trade Claims immediately, but only to pay such undisputed amounts that come due in the ordinary course and on terms consistent with prepetition practice. In addition, to the extent a trade creditor refuses to extend credit terms consistent with the past practice between the parties, the Debtors reserve their rights not to pay such vendor its prepetition claims and to recover any postpetition payments made on account of such vendor's prepetition claims. Thus, the Debtors submit that the relief requested is appropriate and narrowly tailored to facilitate their chapter 11 reorganization process.

29. Additionally, the Plan, which provides for full payment of all Trade Claims, has received support from 100% of holders of the claims arising under Bridge Loan Credit Agreement and approximately 99.71% of holders of claims in dollar amount arising under the Senior Notes.

30. Moreover, numerous courts in this jurisdiction have granted the relief requested herein in the context of prepackaged chapter 11 cases; as such, the relief requested is not extraordinary under the circumstances and is appropriate in the case of prepackaged chapter 11 cases. *See, e.g., In re Dex One Corp.*, Case No. 13-10533 (KG) (Bankr. D. Del. Mar. 19, 2013) (same); *In re Caribe Media Inc.*, Case No. 11-1387 (KG) (Bankr. D. Del. May 23, 2011) (same); *In re U.S. Concrete, Inc.*, No. 10-11407 (PJW) (Bankr. D. Del. May 21, 2010) (same); *In re*

Stallion Oilfield Servs. Ltd., No. 09-132562 (BLS) (Bankr. D. Del. Nov. 16, 2009) (same); *In re Triple Crown Media Inc.*, Case No. 09-13181 (BLS) (Bankr. D. Del. Sept. 15, 2009) (same); *In re ACG Holdings, Inc.*, No. 08-11467 (Bankr. D. Del. July 16, 2008) (same).⁶

31. Based on the foregoing the Debtors submit the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

B. The Debtors Should be Allowed to Pay Trade Claims That Are Administrative Claims

32. In addition to the justification set forth above, section 503(b)(9) of the Bankruptcy Code provides that certain of the Trade Claims are administrative claims against the Debtors' estate. A portion of the Trade Claims constitute administrative claims under section 503(b)(9) of the Bankruptcy Code. The Debtors must, therefore, pay these claims in full to confirm a plan of reorganization. *See* 11 U.S.C. § 1129(a)(9)(a) (requiring payment in full of claims entitled to priority). Although section 503(b)(9) of the Bankruptcy Code does not specify a time for payment of these expenses, bankruptcy courts have the discretion to authorize payments to administrative claimants prior to confirmation if the debtor has the ability to pay and there is a need to pay. Indeed, nothing in the Bankruptcy Code prohibits the Debtors from paying such claims sooner if they choose to do so, or the Court, for good cause shown, from exercising its discretion to authorize the postpetition payment of such obligations prior to confirmation of a chapter 11 plan.

33. Instead of paying the Trade Claims after confirmation of the Plan (at which time such payments may be too late to benefit the Debtors' estates), the Debtors seek to pay such

⁶ Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

claims during the pendency of these chapter 11 cases as and when due. The Debtors believe that this relief is in the best interest of the Debtors' estates and will enable the Debtors to obtain favorable trade terms that will enhance their liquidity. Finally, authorizing the Debtors to pay Trade Claims pursuant to the terms set forth herein should eliminate the burden on this Court and the Debtors arising from numerous individual motions requesting payment on account of their 503(b)(9) claims.

34. Since the enactment of section 503(b)(9) of the Bankruptcy Code, courts in the Third Circuit have exercised their discretion and have authorized the payment of prepetition claims under section 503(b)(9) of the Bankruptcy Code during a chapter 11 case. *See, e.g., In re Amicus Wind Down Corp. (f/k/a Friendly Ice Cream Corp.)*, No. 11-13167 (KG) (Bankr. D. Del. Oct. 6, 2011) (authorizing the debtors to pay prepetition claims arising under section 503(b)(9) of the Bankruptcy Code in the ordinary course of business, as they become due); *In re Neb. Book Co.*, No. 11-12005 (PJW) (Bankr. D. Del. July 21, 2011) (same); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Feb. 23, 2011) (same); *In re The Newark Group, Inc.*, No. 10-27694 (NLW) (Bankr. D.N.J. June 10, 2010) (same); *In re Stallion Oilfield Servs. Ltd.*, No. 09-13562 (BLS) (Bankr. D. Del. Nov. 16, 2009) (same); *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. June 19, 2009) (same); *In re Masonite Corp.*, No. 09-10844 (PJW) (Bankr. D. Del. April 14, 2009) (same); *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS) (Bankr. D. Del. March 9, 2009) (same); *In re TCI 2 Holdings, LLC*, No. 09-13654 (JHW) (Bankr. D.N.J. Feb. 20, 2009) (same); *In re Buffets Holdings, Inc.*, No. 08-10141 (MFW) (Bankr. D. Del. Feb. 13, 2008) (same); *In re Pope & Talbot, Inc.*, No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007) (same); *In re Tweeter Home Entm't Group, Inc.*, No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007) (same); *In re Pliant Corp.*, No. 06-10001 (MFW) (Bankr. D. Del. Feb. 8,

2006) (same); *In re Werner Holding Co. (DE), Inc.*, No. 06-10578 (KJC) (Bankr. D. Del. June 13, 2006) (same).

C. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

35. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash on hand and expected cash flows from ongoing business operations. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment of the Trade Claims. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests with respect to the Trade Claims.

The Requirements of Bankruptcy Rule 6003 are Satisfied

36. As described above, the Debtors are seeking authority pursuant to this Motion to pay prepetition Trade Claims during the first 21 days of these chapter 11 cases. Under Bankruptcy Rule 6003, the Court may authorize the Debtors to satisfy the prepetition claims arising from their Trade Claims during the first 21 days of these chapter 11 cases to the extent such relief is necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* FED. R. BANKR. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

37. If the Debtors are not authorized to pay the Trade Claims in the ordinary course of business, the Debtors believe certain vendors will refuse to continue to operate under the Debtors' current trade terms, undermining the Debtors' operations and the potential success of the Plan at a critical juncture, and prohibiting the Debtors from expeditiously implementing their restructuring through the Plan. Accordingly, the Debtors respectfully submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and seek authority to honor and, where necessary, pay the Trade Claims in the ordinary course of business.

Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order

38. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014, or otherwise.

The Debtors' Reservation of Rights

39. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim or an approval or assumption of any agreement, agreement, contract or lease under section 365 of the Bankruptcy Code. Additionally, nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors or a waiver of the Debtors' rights to dispute any claims regarding escheatment. The Debtors expressly reserve their rights to contest any claim or billing dispute. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

40. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the administrative and collateral agent under the Debtors' bridge loan credit agreement; (d) counsel for certain lenders under the bridge loan credit agreement; (e) counsel to the Senior Notes indenture trustee; (f) counsel to the ad hoc committee of senior noteholders; (g) counsel to the equity sponsor; (h) each of the holders of equity interests in the Debtors; (i) the Delaware Secretary of State; (j) the Delaware Secretary of Treasury; (k) the Delaware State Attorney General; (l) the Office of the United States Attorney General for the State of Delaware; (m) the Internal Revenue Service; and (n) the Securities and Exchange Commission. In light of the nature of the relief requested in this motion, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

41. No prior motion for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) authorizing the Debtors to pay the Trade Claims in the ordinary course of business, (b) scheduling the Final Hearing and (c) granting such other and further relief as may be appropriate.

Dated: November 12, 2013
Wilmington, Delaware

/s/ Domenic E. Pacitti

Domenic E. Pacitti (DE Bar No. 3989)
Michael W. Yurkewicz (DE Bar No. 4165)
**KLEHR HARRISON HARVEY
BRANZBURG LLP**
919 N. Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193

- and -

Morton Branzburg (*pro hac vice* admission pending)
**KLEHR HARRISON HARVEY
BRANZBURG LLP**
1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
Telephone: (215) 569-2700
Facsimile: (215) 568-6603

- and -

Jonathan S. Henes, P.C. (*pro hac vice* admission pending)
Nicole L. Greenblatt (*pro hac vice* admission pending)
David S. Meyer (*pro hac vice* admission pending)
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
PHYSIOTHERAPY HOLDINGS, INC., et al.,¹) Case No. 13-12965 (KG)
)
Debtors.) Joint Administration Requested
)

INTERIM ORDER AUTHORIZING THE DEBTORS TO
PAY PREPETITION CLAIMS OF GENERAL UNSECURED
TRADE CREDITORS IN THE ORDINARY COURSE OF BUSINESS

Upon the motion (the "Motion")² of the Debtors for entry of an interim order (this
"Order"), pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, Rule 6003 of the
Bankruptcy Rules, and Rule 6003-1 of the Local Rules, (a) authorizing the Debtors to pay the
Trade Claims in the ordinary course of business and (b) scheduling a Final Hearing to consider

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-
identification number, are: Physiotherapy Holdings, Inc. (5193); Actra Rehabilitation Associates, Inc. (7806);
Alexandria Sports, Inc. (7654); Benchmark Acquisition Corp. (3850); Benchmark Medical Management
Company (0335); Benchmark O&P Holdings, Inc. (6848); Benchmark Orthotics & Prosthetics, Inc. (7000);
Blue Hen Physical Therapy, Inc. (7267); Cape Prosthetics-Orthotics, Inc. (7914); Carrollton Physical Therapy
Clinic, Inc. (2832); Integrity Physical Therapy, Inc. (1075); Keystone Rehabilitation Associates of Warren
(8341); Keystone Rehabilitation Systems, Inc. (8380); Keystone Rehabilitation Systems of McMurray (6304);
Leesburg Sports, Inc. (4190); MATRIX Healthcare Services, LLC (7344); MATRIX Rehabilitation, Inc.
(3147); MATRIX Rehabilitation-Delaware, Inc. (2504); MATRIX Rehabilitation-Georgia, Inc. (4073);
MATRIX Rehabilitation-Ohio, Inc. (2505); MATRIX Rehabilitation-South Carolina, Inc. (5603); MATRIX
Rehabilitation-Texas, Inc. (9542); Morris Area Rehabilitation Association, Inc. (2043); North Dallas Physical
Therapy Associates, Inc. (5331); Northstar Health Services, Inc. (7152); NSHS Services, Inc. (6789);
Orthopaedic Services of Paducah, Inc. (3143); PhysioLink Corporation (3705); Physiotherapy Associates
Holdings, Inc. (3367); Physiotherapy Associates, Inc. (7193); Physiotherapy Associates-Union Rehab, LLC
(0041); Physiotherapy Corporation (3816); Physiotherapy-BMHI Holdings, Inc. (3361); Physiotherapy-BMI,
Inc. (4107); Potomac Rehabilitation Services, Inc. (2725); Professional Rehab Associates, Inc. (2393);
Progressive Therapy Services, Inc. (8449); Rehab Associates, L.L.C. (9381); Rehab Colorado, LLC (5804);
Rehab Missouri, LLC (0587); Rehab Xcel, LLC (0586); Rehabilitation Consultants, Inc. (1166); R.S. Network,
Inc. (9104); SMR Banyan Tree, Inc. (6933); Swanson Orthotic & Prosthetic Center, Inc. (2308); The Parks
Physical Therapy and Work Hardening Center, Inc. (2926); Theraphysics Partners of Colorado, Inc. (2115);
Theraphysics Partners of Texas, Inc. (9976); Therapy Associates of Martinsville, Inc. (1394); Trumbull P.T.
Corp. (3855); Wisconsin Prosthetics and Orthotics, Inc. (7815). The Debtors' main corporate address is 855
Springdale Drive, Suite 200, Exton, PA 19341.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

entry of the Final Order to the extent a hearing is necessary, all as more fully described in the Motion; and the Court having jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the "*Hearing*"); and upon consideration of the First Day Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted on an interim basis to the extent provided herein.
2. The Debtors are authorized to pay Trade Claims in their sole discretion and in the ordinary course of business; *provided, however*, that the Debtors reserve the right to condition payments on receiving trade terms from the holders of Trade Claims, which terms must be acceptable to the Debtors.
3. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved order regarding the use of cash collateral approved by this Court in these chapter 11 cases.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion as set forth at the Hearing.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry. The Final Hearing on the Motion shall be held on _____, 2013 at ____:____ a.m./p.m. prevailing Eastern Time. Any objections or responses to entry of the proposed Final Order shall be filed seven days before the Final Hearing and served on the following parties: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the administrative and collateral agent under the Debtors' bridge loan credit agreement; (d) counsel for certain lenders under the bridge loan

credit agreement; (e) counsel to the senior notes indenture trustee; (f) counsel to the ad hoc committee of senior noteholders; (g) counsel to the equity sponsor; (h) each of the holders of equity interests in the Debtors; (i) the Delaware Secretary of State; (j) the Delaware Secretary of Treasury; (k) the Delaware State Attorney General; (l) the Office of the United States Attorney General for the State of Delaware; (m) the Internal Revenue Service; and (n) the Securities and Exchange Commission. In the event no objections to entry of the Final Order are timely received, the Court may enter the Final Order without need for the Final Hearing.

9. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: _____, 2013
Wilmington, Delaware

The Honorable Kevin Gross
Chief United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
PHYSIOTHERAPY HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 13-12965 (KG)
)	
Debtors.)	Joint Administration Requested
)	

**FINAL ORDER AUTHORIZING THE DEBTORS TO
PAY PREPETITION CLAIMS OF GENERAL UNSECURED
TRADE CREDITORS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the "*Motion*")² of the Debtors for entry of an final order (this "*Order*") pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Rule 6003 of the Bankruptcy Rules, (a) authorizing the Debtors to pay the Trade Claims in the ordinary course of business, as more fully described in the Motion; and the Court having jurisdiction to consider this Motion and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Physiotherapy Holdings, Inc. (5193); Actra Rehabilitation Associates, Inc. (7806); Alexandria Sports, Inc. (7654); Benchmark Acquisition Corp. (3850); Benchmark Medical Management Company (0335); Benchmark O&P Holdings, Inc. (6848); Benchmark Orthotics & Prosthetics, Inc. (7000); Blue Hen Physical Therapy, Inc. (7267); Cape Prosthetics-Orthotics, Inc. (7914); Carrollton Physical Therapy Clinic, Inc. (2832); Integrity Physical Therapy, Inc. (1075); Keystone Rehabilitation Associates of Warren (8341); Keystone Rehabilitation Systems, Inc. (8380); Keystone Rehabilitation Systems of McMurray (6304); Leesburg Sports, Inc. (4190); MATRIX Healthcare Services, LLC (7344); MATRIX Rehabilitation, Inc. (3147); MATRIX Rehabilitation-Delaware, Inc. (2504); MATRIX Rehabilitation-Georgia, Inc. (4073); MATRIX Rehabilitation-Ohio, Inc. (2505); MATRIX Rehabilitation-South Carolina, Inc. (5603); MATRIX Rehabilitation-Texas, Inc. (9542); Morris Area Rehabilitation Association, Inc. (2043); North Dallas Physical Therapy Associates, Inc. (5331); Northstar Health Services, Inc. (7152); NSHS Services, Inc. (6789); Orthopaedic Services of Paducah, Inc. (3143); PhysioLink Corporation (3705); Physiotherapy Associates Holdings, Inc. (3367); Physiotherapy Associates, Inc. (7193); Physiotherapy Associates-Union Rehab, LLC (0041); Physiotherapy Corporation (3816); Physiotherapy-BMHI Holdings, Inc. (3361); Physiotherapy-BMI, Inc. (4107); Potomac Rehabilitation Services, Inc. (2725); Professional Rehab Associates, Inc. (2393); Progressive Therapy Services, Inc. (8449); Rehab Associates, L.L.C. (9381); Rehab Colorado, LLC (5804); Rehab Missouri, LLC (0587); Rehab Xcel, LLC (0586); Rehabilitation Consultants, Inc. (1166); R.S. Network, Inc. (9104); SMR Banyan Tree, Inc. (6933); Swanson Orthotic & Prosthetic Center, Inc. (2308); The Parks Physical Therapy and Work Hardening Center, Inc. (2926); Theraphysics Partners of Colorado, Inc. (2115); Theraphysics Partners of Texas, Inc. (9976); Therapy Associates of Martinsville, Inc. (1394); Trumbull P.T. Corp. (3855); Wisconsin Prosthetics and Orthotics, Inc. (7815). The Debtors' main corporate address is 855 Springdale Drive, Suite 200, Exton, PA 19341.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and the Court having entered the Interim Order Authorizing the Debtors to Pay Prepetition Claims of Trade Creditors in the Ordinary Course of Business [Docket No. ____] (the “*Interim Order*”); and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon consideration of the First Day Declaration, the record of the Hearing; and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted to the extent provided herein.
2. The Debtors are authorized to pay Trade Claims in their sole discretion and in the ordinary course of business; *provided, however*, that the Debtors reserve the right to condition payments on receiving trade terms from the holders of Trade Claims, which terms must be acceptable to the Debtors.
3. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the

Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved order regarding the use of cash collateral approved by this Court in these chapter 11 cases.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

7. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

8. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: _____, 2013
Wilmington, Delaware

The Honorable Kevin Gross
Chief United States Bankruptcy Judge