

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

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In re	:	Chapter 11
	:	
Laboratory Partners, Inc. <i>et al.</i> , ¹	:	Case No. 13-12769 (PJW)
	:	
	:	(Joint Administration Pending)
Debtors.	:	
-----X	:	Re: D.I. 8

**INTERIM ORDER UNDER SECTIONS 105(a) AND 366 OF THE BANKRUPTCY
CODE (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR
DISCONTINUING SERVICES; (II) DEEMING UTILITY COMPANIES
ADEQUATELY ASSURED OF FUTURE PERFORMANCE;
(III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE
ASSURANCE OF PAYMENT; AND (IV) SCHEDULING A FINAL HEARING**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors")² for entry of interim and final orders, pursuant to sections 105(a) and 366 the Bankruptcy Code, (i) prohibiting Utility Companies from altering, refusing or discontinuing services or discriminating against the Debtors solely on the basis of the commencement of these cases or that the Debtors did not pay a debt when due prepetition; (ii) deeming Utility Companies adequately assured of future performance; (iii) establishing procedures for determining adequate assurance of payment; and (iv) scheduling a final hearing on the Motion; upon the Brandt Declaration; and due and sufficient notice of the Motion having

¹ The Debtors and the last four digits of their taxpayer identification numbers are as follows: Laboratory Partners, Inc. (3376), Kilbourne Medical Laboratories, Inc. (9849), MedLab Ohio, Inc. (9072), Suburban Medical Laboratory, Inc. (0859), Biological Technology Laboratory, Inc. (4370), Terre Haute Medical Laboratory, Inc. (1809), and Pathology Associates of Terre Haute, Inc. (6485). Certain of the Debtors do business as MEDLAB. The Debtors' mailing address for notice in these cases is: 671 Ohio Pike, Suite K, Cincinnati, OH 45245.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to such terms in the Motion.

been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis.
2. Until such time as a final order is entered by the Court or denied, all Utility Companies are prohibited from (a) discontinuing, altering or refusing service to the Debtors on account of any unpaid prepetition charges, (b) discriminating against the Debtors, or (c) requiring payment of a deposit or receipt of any other security for continued Utility Services as a result of the Debtors' commencement of chapter 11 cases or any outstanding prepetition invoices, other than as set forth in the Motion.
3. Any bonds or security deposits that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Companies holding the same, except upon either (a) written agreement(s) between the Debtors and Utility Companies without further order of the Court or (b) further order(s) of the Court.
4. The Debtors shall, within ten (10) business days of the entry of this interim order, furnish Utility Companies with adequate assurance of payment for postpetition services by depositing \$75,387 in an account maintained by the Debtors (the "Utility Deposit Account"), which may be adjusted by the Debtors without further order of this Court if the Debtors terminate any Utility Service provided by a Utility Company, make other arrangements with respect to adequate assurance of payment or determine an entity listed on **Exhibit A** to the Motion is not a Utility Company; provided however, that the Debtors shall not be required to

make deposits on account of Utility Companies that already hold a deposit or pre-payment equal to or greater than one half (1/2) of one month of Utility Services.

5. In the event that a Utility Company believes that additional assurance ("Additional Assurance") is required, it may request such Additional Assurance pursuant to the procedures set forth below (the "Additional Assurance Procedures"):

- (a) Absent compliance with the Additional Assurance Procedures, the Utility Companies may not alter, refuse or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these chapter 11 cases or any unpaid prepetition charges or request payment of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- (b) The Debtors will serve copies of the Motion and the interim order via first-class mail, within three (3) business days after the date that the interim order is entered by the Court on all Utility Companies identified on **Exhibit A**. In the event that any Utility Company has been omitted from **Exhibit A**, the Debtors shall supplement the exhibit and shall promptly serve copies of the Motion and the interim order on such Utility Company upon learning of such omission.
- (c) Any Utility Company desiring Additional Assurance must serve a written request (an "Additional Assurance Request") on: (i) the Debtors, 671 Ohio Pike, Suite K, Cincinnati, OH 45245; (ii) Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, New York, 10036, Attn: Leo T. Crowley, Esq., and Margot Erlich, Esq.; (iii) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware, 19899-1347, Attn: Robert J. Dehney, Esq.; (iv) Bingham McCutchen LLP, 399 Park Avenue, New York, New York, 10022-4689, Attn: Mark W. Deveno; and (v) counsel for any statutory committee appointed in these cases (the "Notice Parties");
- (d) Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the type of Utility Services provided as well as the location of the Debtors to which such Utility Service is provided and account number(s); (iii) include a summary of the Debtors' payment history relevant to each affected account(s), including any security deposits; (iv) include a proposal for what would constitute adequate assurance from the Debtors, along with an explanation as to why the Utility Company believes the Proposed Adequate

Assurance is not sufficient adequate assurance of future payment; and (v) be served upon the Notice Parties so that it is actually received by the date that is seven (7) days prior to the Final Hearing;

- (e) Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have (i) the greater of fourteen (14) days from receipt of the request or thirty (30) days from the Petition Date or (ii) such other date as the parties mutually agree (the "Resolution Period") to negotiate with such Utility Company to resolve such Utility Company's request for additional assurance of payment;
- (f) The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Company and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Company with Additional Assurance in the form of, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such Additional Assurance is reasonable;
- (g) If the Debtors determine that an Additional Assurance Request is not reasonable and/or they are not able to reach an alternative resolution with the Utility Company during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will schedule a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code;
- (h) During any Resolution Period and, if applicable, pending resolution of any Determination Hearing, the particular Utility Company that has requested the Additional Assurance shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance; and
- (i) Unless and until a future order of the Court is entered requiring further assurance of payment, based on the establishment of Proposed Adequate Assurance, a Utility Company shall be deemed to have adequate assurance of payment.

6. A Utility Company shall be deemed to have adequate assurance of payment unless and until: (a) the Debtors, in their sole discretion, agree to (i) such Additional

Assurance Request as may be requested, or (ii) an alternative adequate assurance of payment with the Utility Company during the Resolution Period; or (b) this Court enters an order at any Determination Hearing requiring that additional adequate assurance of payment be provided.

7. To the extent that the Debtors identify additional Utility Companies not included on **Exhibit A** to the Motion, the Debtors will promptly (a) file a supplement to **Exhibit A** to the Motion adding the name of the newly-identified Utility Companies and (b) serve copies of the Motion, this Order and any final order on such Utility Companies. This Order shall be binding on all Utility Companies, regardless of when such Utility Company was added to **Exhibit A** to the Motion, subject to any further order(s) of the Court.

8. Any Utility Company subsequently added to **Exhibit A** to the Motion that believes it requires additional assurance must (a) serve an Additional Assurance Request so that it is received on or prior to the date that is fourteen (14) days after the date of service of the Motion and orders by proposed counsel for the Debtors, and (b) otherwise comply with the Additional Assurance Procedures.

9. Nothing in this Order shall be deemed to affect any burden of proof that either the Debtor or any Utility Company may have in a Determination Hearing.

10. Nothing in the Motion or in this Order is intended or should be construed as (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim, including the validity or priority thereof, or (c) an approval or assumption of any agreement, contract or lease whether under section 365(a) of the Bankruptcy Code or otherwise. Likewise, any payment made pursuant to this 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.

11. This Order shall constitute valid authorization for the postpetition payments to be made to the Utility Companies pursuant to section 549(a) of the Bankruptcy Code.

12. The Motion and this Order shall be served by overnight mail, hand delivery or fax on each Utility Company the Debtors believe could be affected by the final relief requested in the Motion and all other parties required to receive service under Rule 2002-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") within three (3) business days of entry of this Order.

13. Any responses or objections to the Motion and entry of the Order on a final basis must (a) be made in writing, (b) state with particularity the grounds therefor, (c) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules, and (d) be served upon (i) the Debtors, 671 Ohio Pike, Suite K, Cincinnati, OH 45245; (ii) Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, New York, 10036, Attn: Leo T. Crowley, Esq., and Margot Erlich, Esq. and Morris, Nichols, Arsht & Tunnell, LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware, 19810, Attn: Robert J. Dehney, Esq., co-counsel to the Debtors; (iii) Bingham McCutchen LLP, 399 Park Avenue, New York, New York, 10022-4689, Attn: Mark W. Deveno, counsel to the Debtors' postpetition lender; and (iv) counsel to any statutory committee appointed in these cases.

14. The deadline by which objections to the Motion and the final order must be filed and received by the above parties is November 21, 2013 at 4:00 p.m. (prevailing Eastern Time). A final hearing, if required, on the Motion will be held on November 26, 2013 at 2:00 p.m. (prevailing Eastern Time). If no objections

are filed to the Motion and entry of this Order on a final basis, the Court may enter a final order without further notice or a hearing.

15. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

16. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm.

17. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

18. This Court shall retain jurisdiction with respect to all matters related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
Oct 29, 2013



THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE