

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

STEWARD HEALTH CARE SYSTEM LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-90213 (CML)

(Jointly Administered)

**THE COMMONWEALTH OF MASSACHUSETTS' EMERGENCY MOTION
COMPELLING THE DEBTORS TO MAINTAIN WORKERS COMPENSATION AND
MEDICAL MALPRACTICE INSURANCE FOR THE MASSACHUSETTS HOSPITALS**

**EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED
NOT LATER THAN 5:00 P.M. (CENTRAL TIME) ON OCTOBER 25, 2024.**

**IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT
EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST
APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN
RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE
PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE
PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

The sale and transition of the hospitals in Massachusetts to new owners and operators, and the pending sale of the Stewardship practices by Steward Health Care System LLC and its affiliated debtors (collectively, "Steward" or the "Debtors"), have brought to light serious issues concerning the availability and adequacy of insurance coverage. Steward has failed to maintain

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/Steward>. The Debtors' service address for these chapter 11 cases is 1900 N. Pearl Street, Suite 2400, Dallas, Texas 75201.

adequate workers' compensation for its employees or medical malpractice insurance coverage for its physicians and it appears unprepared to maintain that coverage (and/or tail coverage) now that transitions to new operators have occurred (including, but not limited to, coverage for claims asserted after the sale and transition but arising before closing) as required by Massachusetts statute, U.S. bankruptcy law, this Court's Insurance Orders (defined below), and section 3 of the U.S. Trustee Guidelines for Region 7.

Efforts to resolve this issue consensually have failed. Accordingly, the Commonwealth of Massachusetts, by and through the Executive Office of Health and Human Services of the Commonwealth of Massachusetts and the Attorney General of the Commonwealth of Massachusetts ("Massachusetts" or the "Commonwealth"), seeks an order compelling Steward to comply with its legal obligations to maintain workers' compensation and medical malpractice insurance coverage. Although the sales of the Hospitals have closed, the sale of the Stewardship medical practices may close during October, thus compelling the Commonwealth's request for an expedited hearing to consider the relief requested by this Motion.

BASIS FOR RELIEF

Massachusetts seeks this relief pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6004 and 9013 of the Federal Rules of Bankruptcy Procedure, Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and 28 U.S.C. § 959(b).

JURISDICTION AND VENUE

The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this Motion under 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

Since this case commenced, the Commonwealth of Massachusetts has been steadfast that the health and safety of patients and the protection of workers and providers is of paramount importance. Steward has continually claimed it shared that point of view. Now, even though the Commonwealth has worked with all interested parties to achieve the transition of 6 hospitals to new operators, a health and safety issue has arisen: employees, from doctors to mechanics, from nurses to food service personnel, can only unreservedly fulfill their obligations to patients if they have workers' compensation and malpractice insurance coverage for the periods Steward is required to provide them, and Steward's failure to provide that required coverage threatens this basic tenet.

Providing this insurance is not simply aspirational; it is compulsory under the laws of the Commonwealth. Steward's exit from Massachusetts does not relieve it from compliance with Massachusetts law relating to the provision of workers' compensation and medical malpractice insurance coverage, and even if it did, Steward explicitly confirmed it would provide both in the asset purchase agreements it executed with each of the acquirers of the hospitals and Stewardship.

Indeed, at the outset of these cases, Steward sought and was granted authority on an interim and later final basis to continue its insurance programs, including (i) utilization of its captive insurer, TRACO International Group S. DE R.L. ("TRACO") to provide medical malpractice coverage, and (ii) its self-insured workers' compensation coverage to the extent permitted by applicable state laws. *See* ECF No. 6 (the "Insurance Motion") *and* Nos. 116, 611 & 2166 (interim and final orders, collectively the "Insurance Orders"). The purpose of this relief was to ensure that Steward would have adequate insurance coverage, compliant with state law.

Massachusetts has throughout this case regularly sought confirmation regarding the adequacy of Steward's insurance coverage and its compliance with, among other things, bonding requirements under state workers' compensation law, but without success due to Steward's intransigence. The recent sales process for Steward's Massachusetts hospitals and Stewardship has heightened these concerns as it has become apparent that despite its representations to the contrary, Steward does not have adequate coverage in place to protect its healthcare workers after it ceases operations in Massachusetts for losses or claims arising prior to the completion of any transition.

Although Steward has been honoring its post-petition obligations to pay workers' compensation claims, it has not posted the bond required to cover its self-insured obligations for claims arising in 2024. Steward misrepresented in the Insurance Motion that a bond was posted for 2024, when in fact the referenced bond number was for a bond covering 2023 claims. *See* Declaration of Sheri Bowles, dated October 2, 2024 (the "Bowles Decl.") at ¶ 5, a copy of which is attached hereto as **Exhibit A**. Steward has failed to correct this situation by either posting a bond for 2024 or procuring an insurance policy to come into compliance with Massachusetts law. *Id.* at ¶ 7.

Similarly, the extent of Steward's existing and continuing medical malpractice coverage for its practitioners is questionable. TRACO has little to no independent capital and is wholly dependent on Steward for reimbursements. In reality, notwithstanding holding itself out as a stand-alone insurer (captive or otherwise), TRACO is simply a pass-through entity. When it receives a claim for payment, it asks Steward to pay it. Under Massachusetts law, coverage is required until the expiry of applicable statutes of limitations. Steward has not demonstrated the existence of any such coverage after it transitions its healthcare facilities and physician practices to new operators,

leaving its practitioners at risk if timely claims are asserted in the future and patients at risk with limited sources of recovery for any valid claims.

I. *The Workers' Compensation Program and Coverage*

Massachusetts law requires that all employers in the Commonwealth maintain workers' compensation insurance coverage for their employees. *See* M.G.L. ch. 152 § 25A; Bowles Decl at ¶ 3. Employers are permitted to self-insure, if they have a bond in place that is sufficient to cover anticipated claims. *See id.* Bonds that are posted each year remain available to cover any claims for that year as well as prior years. *See id.* Failure to insure or self-insure can result in the issuance of a stop work order and the imposition of fines. *See id.* The statute of limitations for filing a workers' compensation claim is 4 years from the date the employee first became aware of the causal relationship between his disability and his employment. *See* M.G.L. ch. 152 § 41.

In the schedules attached to the Insurance Motion, the Debtors report that they self-insure workers' compensation in Massachusetts, listing bonds they assert are in force for 2024, including the last bond issued by Atlantic Specialty Insurance Company and posted for the benefit of the Commonwealth in the amount of \$21.950 million for workers' compensation. *See* Insurance Mot. Exh. D at 3. But, upon investigation, it became clear that this workers' compensation bond was not for 2024 claims, but rather 2023 claims. Bowles Decl. at ¶ 5. Despite the Commonwealth bringing this to the Debtors' attention several times, the Debtors have failed to provide a 2024 bond in the amount of anticipated claims or any insurance coverage to address payment of this amount, their self-insured retention. *See id.* at ¶ 7. The Debtors have reinsurance/excess reinsurance from Hartford Fire Insurance Company that covers claims above \$750,000, which coverage expires at 11:59 pm on December 31, 2024. *See* Bowles Decl. at ¶ 6.

Not only are recipients of current benefits at risk now when Steward stops funding claims, workers that may have sustained an injury now while employed by Steward may not have coverage in the future when they timely submit claims. As a result, there is a significant window of future exposure, which would normally be covered by a posted bond for year in question. But there is no such bond here.

II. *Medical Malpractice Coverage*

Massachusetts law requires that all licensed physicians maintain medical malpractice insurance coverage as “a condition of rendering any direct or indirect patient care in the Commonwealth.” 243 CMR 2.07(16).² This coverage must “be continued until the expiration of any statute of limitations relevant to the events or occurrences covered. Compliance may be through occurrence coverage or claims made with appropriate tail coverage.” 243 CMR 2.07(16)(f). The statute of limitations for bringing a medical malpractice claim in Massachusetts is 3 years from the accrual of the claim, provided that the claim is brought no later than 7 years after the occurrence of the alleged act or omission giving rise to the malpractice claim. *See* M.G.L. ch. 260 § 4.

III. *TRACO: An Unfunded Captive Insurer*

Steward self-insures for its medical malpractice coverage through TRACO³. According to the Insurance Motion, “TRACO is a captive insurance company incorporated and domiciled in Panama that provides medical malpractice coverage, comprehensive general liability coverage, workers’ compensation coverage, employer liability coverage, stop-loss coverage, and certain

² In addition, Massachusetts’ law requires that other licensed healthcare professionals, such as Advanced Practice Registered Nurses, also maintain medical malpractice insurance. 244 CMR 4.09.

³ In the Insurance Motion, Steward also states that TRACO provides coverage for Steward’s self-insured retentions for its workers’ compensation coverage. However, the Commonwealth understands that Steward utilizes Sedgwick Claims Management Services to administer its self-insured retention in Massachusetts.

excess liability coverage to the Debtors and certain of their non-Debtor affiliates” Insurance Mot. ¶ 26. In addition, TRACO provides medical malpractice coverage to approximately 1,400 medical practitioners, including approximately 1,200 physicians who are employed by the Debtors and approximately 200 physicians who are in private practice and are affiliated with the Debtors.” Insurance Motion at ¶ 26.

According to Steward, “the Debtors are not reimbursed in cash by TRACO for settlement payments. Rather, such payments result in intercompany payables owed by TRACO to the Debtors that are recorded on TRACO’s and the Debtors books and records. Further, as set forth in the Insurance Supplement, TRACO has limited cash on its balance sheet . . .” [ECF No. 2072 ¶ 18.]. In short, TRACO has nothing to satisfy claims against the Debtors. It cannot provide coverage unless Steward has available funds to pay claims and defense costs.

ARGUMENT

The Debtors must comply with state law while in chapter 11 pursuant to 28 U.S.C. § 959(b), which provides: “Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.”⁴ *See also Tex. Comptroller of Pub. Accounts v. Liuzza (In re Tex. Pig Stand, Inc.)*, 610

⁴ In addition, section 3 of the U.S. Trustee Guidelines for Region 7 requires the Debtors to maintain customary insurance coverage:

F.3d 937, 943 (5th Cir. 2010) (“federal law directly incorporates state law when a bankruptcy trustee manages property”). As the Court overseeing the Debtors’ chapter 11 case, this Court has the authority to direct and compel the Debtors to comply with Massachusetts laws relating to the provision and maintenance of workers’ compensation and medical malpractice insurance. Enforcing compliance is a core function of this Court.

In addition, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, the Court has authority to require performance because compliance with state insurance laws is “necessary or appropriate to carry out the provisions” of the Bankruptcy Code, the ability to reorganize. 11 U.S.C. § 105(a); *see also Marrama v. Citizens Bank*, 548 U.S. 365, 375 (2007) (Section 105(a) grants bankruptcy judges “broad authority . . . to take any action that is necessary or appropriate to prevent an abuse of process”) (citations and internal quotations omitted); *In re Southmark Corp.*, 49 F.3d 1111, 1116 (5th Cir. 1995) (citations and internal quotations omitted).

Compliance with state law mandated insurance requirements is not a surprise to the Debtors. In the Insurance Motion, the Debtors acknowledge that maintaining workers’ compensation and medical malpractice coverage is critical to their operations and legally required. The Debtors’ eventual exit from Massachusetts cannot result in employees being exposed to liabilities that by law were supposed to be covered by the Debtors. Sadly, the Commonwealth is

Unless the United States Trustee otherwise directs or the Debtor obtains a Court waiver, the Debtor must maintain insurance customary in the Debtor's business as well as the following:

1. If the Debtor has tangible assets susceptible to casualty loss (fire, weather, theft, vandalism, etc.), casualty insurance must be maintained;
2. If the Debtor has employees, workers’ compensation insurance or sufficient equivalent coverage must be maintained, unless the Debtor obtains an order of the court waiving this requirement;
3. If the Debtor conducts business operations, general liability and, if appropriate, product liability insurance must be maintained.

not aware of any efforts by the Debtors to secure workers' compensation coverage or real medical malpractice tail insurance coverage.

The Debtors have informed the Commonwealth that they are reserving approximately \$1.25 million per month to cover malpractice claims throughout the Steward system, not just in Massachusetts. Assuming full funding from the start of this case through a projected transition date of September 30, 2024,⁵ that means that the Debtors have reserved just a little over \$6 million for system-wide claims.

This amount appears insufficient to cover anticipated claims just in Massachusetts. Based on publicly available records, over the past five years, there has been on average in Massachusetts approximately \$8 million in medical malpractice claims per year against physicians alone, indicating that this reserve will be insufficient to cover claims that may be asserted against any of the 1,400 covered physicians and other licensed professionals across the entire Steward system, not simply this year but throughout the malpractice statute of limitations (up to seven years from now). In blunt terms, for providers without adequate coverage, this means personal liability for defense costs and adverse decisions. For patients, it means uncompensated damages. Neither the providers nor the patients deserve to suffer this result.

The workers' compensation situation is just as bad—there is no fund or bond in place. Healthcare workers that are currently receiving benefits and those that may have new (known or unknown) claims will lose access to Steward coverage. *See* Bowles Decl. ¶ 9. However, Steward has acknowledged that it is aware that “all of the jurisdictions in which the Debtors operate their business (other than Texas), require the Debtors to maintain workers' compensation coverage in accordance with applicable law.” Insurance Motion ¶ 41.

⁵ It is impossible to confirm the amount reserved based on the Debtors' monthly operating reports, and the Debtors have not separately reported the amount reserved.

The Debtors cannot cut and run from Massachusetts leaving their former employees and patients without any coverage. The Debtors must be required to provide coverage to comply with Massachusetts law. The financial burden of providing the necessary coverage must be borne by the estate and likely will pale in comparison to the costs of dealing with administrative expense claims that are likely to be filed by parties impacted by the lack of coverage.

Accordingly, the Commonwealth respectfully requests that the Court order the Debtors to immediately provide and maintain the following:

1. Medical malpractice tail insurance coverage for all its Massachusetts-based licensed healthcare workers for a period of 7 years, in amounts determined to be adequate by an independent actuarial analysis;
2. A single premium non-cancelable insurance policy issued by an insurance company authorized to transact the business of Workers' Compensation Insurance in the Commonwealth of Massachusetts, insuring against any liability that may have arisen under MGL ch. 152 or a surety bond executed and issued by a company authorized to transact business in the Commonwealth of Massachusetts in an amount and form approved by the Massachusetts Department of Industrial Accidents guaranteeing the payment of any liability on Steward's part that may have arisen under MGL ch. 152 to cover all of its employees for known and future workers' compensation claims for injuries sustained between January 1, 2024 and the date in which Steward ceases operations in Massachusetts; and
3. A full accounting of all open medical malpractice and workers' compensation claims.

CONCLUSION

The Commonwealth respectfully requests that the Court consider this Motion on an emergency basis and enter the attached form of order attached hereto as **Exhibit B** granting the relief requested and such other and further relief that is just and proper.

Dated: October 7, 2024
New York, New York

Respectfully submitted,
COMMONWEALTH OF MASSACHUSETTS,
By its attorney,

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Certificate of Service

The undersigned certifies that on October 37 2024, a true and correct copy of this document was served via the Court's CM/ECF system on all parties who are deemed to have consented to ECF electronic service.

/s/ Andrew M. Troop
Andrew M. Troop

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

STEWARD HEALTH CARE SYSTEM LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-90213 (CML)

(Jointly Administered)

**DECLARATION OF SHERI BOWLES IN SUPPORT OF THE COMMONWEALTH OF
MASSACHUSETTS' EMERGENCY MOTION COMPELLING THE DEBTORS TO
MAINTAIN WORKERS COMPENSATION AND MEDICAL MALPRACTICE
INSURANCE FOR THE MASSACHUSETTS HOSPITALS**

I, Sheri Bowles, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am the Director of the Department of Industrial Accidents (“DIA”) of the Commonwealth of Massachusetts. The DIA oversees, among other things, the administration of workers' compensation coverage in the Commonwealth. I am familiar with the laws and regulations relating to workers' compensation.
2. I make this declaration in support of the Commonwealth’s motion (the “Motion”)² seeking entry of an order compelling Steward Health Care System LLC and its affiliated debtors

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

(collectively, “Steward” or the “Debtors”) to maintain workers’ compensation and medical malpractice insurance coverage.

3. Massachusetts law requires that all employers in the Commonwealth maintain workers' compensation insurance coverage for its employees. M.G.L. ch. 152 § 25A. Employers are permitted to self-insure, if they have a bond in place that is sufficient to cover anticipated claims. Bonds that are posted each year remain available to cover any claims for that year as well as prior years. Failure to insure or self-insure can result in the issuance of a stop work order and the imposition of fines.
4. The statute of limitations for filing a workers’ compensation claim is 4 years from the date the employee first became aware of the causal relationship between his disability and his employment. M.G.L. ch. 152 § 41.
5. In the schedules attached to the Insurance Motion, the Debtors list bonds they state are in force for 2024, including the last bond issued by Atlantic Specialty Insurance Company and posted for the benefit of the Commonwealth in the amount of \$21.950 million for workers’ compensation. (ECF No. 6, Exh. D, p.3). But, upon investigation, it became clear that this workers’ compensation bond listed was not for 2024 claims, but rather 2023 claims.
6. The Debtors have a reinsurance/excess reinsurance from the Harford Fire Insurance Company that covers claims above \$750,000, which coverage expires at 11:59 pm, December 31, 2024.
7. Despite the Commonwealth bringing this to the Debtors’ attention several times, the Debtors have failed to provide a 2024 bond in the amount of anticipated claims or any insurance coverage to address payment of this amount, their self-insured retention.

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

STEWARD HEALTH CARE SYSTEM LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-90213 (CML)

(Jointly Administered)

**ORDER GRANTING THE COMMONWEALTH OF MASSACHUSETTS'
EMERGENCY MOTION COMPELLING THE DEBTORS
TO MAINTAIN WORKERS COMPENSATION AND MEDICAL MALPRACTICE
INSURANCE FOR THE MASSACHUSETTS HOSPITALS**

Upon the motion, dated October 7, 2024 (the “Motion”)² by the Commonwealth of Massachusetts, by and through the Executive Office of Health and Human Services of the Commonwealth of Massachusetts and the Attorney General of the Commonwealth of Massachusetts, pursuant to Bankruptcy Code section 105(a), Rule 9013 of the Federal Rules of Bankruptcy Procedure, Rules 6004 and 9013-1 of the Bankruptcy Local Rules, and 28 U.S.C. § 959(b), seeking an order (i) compelling Steward to comply with its legal obligations to maintain workers’ compensation and medical malpractice insurance coverage, and (ii) granting such other and further relief that is just and proper, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided;

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² Capitalized terms used but not defined herein have the meanings given in the Motion.

and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and upon the hearing held on the Motion; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled; and upon consideration of the declaration of Sheri Bowles in support of the Motion filed contemporaneously therewith; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their respective estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is hereby APPROVED as set forth herein.
2. The Debtors shall provide and maintain:
 - a. Medical malpractice tail insurance coverage for all its Massachusetts-based licensed healthcare workers for a period of 7 years, in amounts determined to be adequate by independent actuarial analysis. Steward will procure that independent actuarial analysis at its own expense upon consultation with the Commonwealth;
 - b. A single premium non-cancelable insurance policy issued by an insurance company authorized to transact the business of Workers' Compensation Insurance in the Commonwealth of Massachusetts, insuring against any liability that may have arisen under MGL ch. 152 or a surety bond executed and issued by a company authorized to transact business in the Commonwealth of Massachusetts

in an amount and form approved by the Massachusetts Department of Industrial Accidents guaranteeing the payment of any liability on Steward's part that may have arisen under MGL ch. 152 to cover all of its employees for known and future workers' compensation claims for injuries sustained between January 1, 2024 and the date in which Steward ceases operating in Massachusetts; and

c. A full accounting of all open medical malpractice and workers' compensation claims relating to its Massachusetts-based healthcare workers.

3. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

4. The Bankruptcy Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Order.

Signed: October ____, 2024

Christopher Lopez
United States Bankruptcy Judge