IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

In re:	Chapter 11
AFH AIR PROS, LLC, *et al.*,[1]	Case No. 25-10356 (PMB)
Debtors.	(Jointly Administered)

DEBTORS' SUPPLEMENTAL BRIEF IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED CHAPTER 11 PLAN OF LIQUIDATION OF AFH AIR PROS, LLC AND ITS DEBTOR AFFILIATES

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this supplemental brief in support of confirmation of the *Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* [Docket No. 478] (as modified, amended, or supplemented, the "Plan").[2] In further support of confirmation of the Plan, the Debtors respectfully state as follows:

ADDITIONAL BACKGROUND

1. On August 6, 2025, the Court held a hearing (the "Confirmation Hearing") to consider approval of the Disclosure Statement on a final basis and confirmation of the Plan. As of the Confirmation Hearing, the only remaining, unresolved objection to confirmation of the Plan

[1] The last four digits of AFH Air Pros, LLC's tax identification number are 1228. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent at https://www.veritaglobal.net/AirPros. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 150 S. Pine Island Road, Suite 200, Plantation, Florida 33324.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan, Disclosure Statement, or *Debtors' Memorandum of Law in Support of Final Approval of the Disclosure Statement and Confirmation of Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtors Affiliates* [Docket No. 610] (the "Confirmation Brief"), as applicable.

was the U.S. Trustee Objection [Docket No. 594]. Specifically, the U.S. Trustee objected to confirmation of the Plan on the basis that the Plan includes an "opt out" Third-Party Release, which the U.S. Trustee asserts is an impermissible non-consensual release. As set forth in Section D.2 of the Debtors' Confirmation Brief, the Debtors assert that the Third-Party Release is a permissible consensual release consistent with this Court's prior decisions.

2. At the conclusion of the Confirmation Hearing, the Court took the matter under advisement. On August 13, 2025, the Court entered the *Order Setting Continued Hearing to Provide Opportunity to Supplement Record of Hearing to Consider Confirmation of Debtors' Second Amended Plan of Reorganization* [Docket No. 642] (the "Supplemental Order"), which schedules a further hearing on August 20, 2025, at 1:00 p.m. (prevailing Eastern Time) to permit the parties to submit additional evidence in support of or in opposition to confirmation of the Plan, including whether the creditors affected by the Third-Party Release are receiving substantial consideration in exchange for the Third-Party Release.

3. As requested by the Court, the Debtors submit this supplemental brief as well as the *Supplemental Declaration of Andrew D.J. Hede in Support of Confirmation of the Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* (the "Supplemental Hede Declaration"), filed contemporaneously herewith.

SUPPLEMENTAL ARGUMENT

A. The Third-Party Release is Necessary and Appropriate

4. Consensual releases are permitted in chapter 11 plans under sections 105(a) and 1123(b)(6) of the Bankruptcy Code. *In re Lavie Care Ctrs.*, No. 24-55507-PMB, 2024 Bankr. LEXIS 2900, at *33 (Bankr. N.D. Ga. Dec. 5, 2024). As this Court has recognized, "the standard then is whether such a provision is 'appropriate' or 'necessary or appropriate.'" *Id*. Furthermore,

"finding consent is what is necessary to make [a third-party release] either a binding contract or 'necessary or appropriate' as to an individual creditor in the bankruptcy plan context." *Id.* at *35.

5. As discussed in detail in Section D.2.a of the Confirmation Brief, the Releasing Parties have consented to the Third-Party Release, because each Released Party either (a) voted to accept the Plan;[3] (b) is left unimpaired and deemed to accept the Plan and did not opt out of granting the Third-Party Release; (c) rejected, was deemed to reject, or abstained from voting on the Plan, and did not opt out of granting the Third-Party Release; or (d) did not otherwise object to the Third-Party Release. The Third-Party Release under the Plan is a *consensual* release in all respects, binding only those parties who have consented. The Plan does not purport to bind any creditor or party in interest to the Third-Party Release who has not consented to the release. Accordingly, under this Court's standard enunciated in *Lavie*, because the Third-Party Release is consensual, the Third-Party Release is necessary and appropriate as to each individual Releasing Party.

6. The Debtors understand that this Court also believes that, in addition to being consensual, third-party releases "should be uncommon, should meet certain procedural requirements, and should be justified under the particular circumstances of the case." *Id*. at *40–41. However, the desire that releases be uncommon should not override the consensual nature of

[3] The Debtors acknowledge that a few creditors voted to accept the Plan and purported to opt out of the Third-Party Release, which is not permitted under the Plan. At the Confirmation Hearing, the U.S. Trustee argued that these accepting, opt outs are evidence that the solicitation materials are confusing and cannot evidence consent. However, this Court addressed the same situation in *Lavie* and held that such creditors are presumed to have read the associated materials, and their opt out is not effective. *See* No. 24-55507-PMB, 2024 Bankr. LEXIS 2900, at *36 n.54. As this Court observed in *Lavie* with respect to parties in interest that completed a ballot, "having paid adequate attention to the documents received to have completed them, signed them, and returned them timely, it is not reasonable for the Court to assume that these parties nevertheless did not understand the same documents." *Id*. at *24 (internal footnotes omitted).

the Third-Party Release or be a basis to deny a third-party release that is otherwise justified under the circumstances.

7. Moreover, as discussed in detail in the Confirmation Brief and on the record at the Confirmation Hearing, the Debtors submit that the Third-Party Release under the Plan satisfies all procedural requirements and is justified under the circumstances of these Chapter 11 Cases. (Confirmation Brief ¶¶ 93–94.) To the extent that "consideration" received by creditors affected by the Third-Party Release is a requirement to justify a *consensual* third-party release, the Released Parties have provided, and are providing, consideration that is commensurate with the value received from the Third-Party Release.

B. General Unsecured Creditors Are Receiving Sufficient Consideration to Support the Third-Party Release

8. In the Supplemental Order, the Court identified four considerations that are important to the Court's analysis of whether creditors affected by the Third-Party Release are receiving substantial consideration in exchange for the Third-Party Release, including:

- The nature, extent, validity and collectability of the Litigation Trust Claims (the proceeds of which General Unsecured Claims share in pursuant to the Plan);
- The nature, extent, validity and collectability of any known or suspected claims or causes of action against the Released Parties that would be released through the Release;
- The analysis pursuant to which the Committee determined that the settlement embodied in the Creditors' Committee Settlement, including the Release, is in the best interests of the Holders of General Unsecured Claims; and
- The current unpaid amount of the DIP Credit Facility, the amount of same that it is anticipated will remain unpaid on the Effective Date, and the expected ultimate treatment under the Plan of any such remaining unpaid amount.

9. As discussed herein and in the Supplemental Hede Declaration, based on the facts and circumstances of these Chapter 11 Cases, the creditors affected by the Third-Party Release

(i.e., the "Releasing Parties" under the Plan) are receiving fair consideration in exchange for the Third-Party Release.

1. The Litigation Trust Claims

10. Under the Plan, the Litigation Trust Claims are comprised of (i) certain "Designated Causes of Action"[4] against the Non-Released Debtor D&Os and any other person that is not a Released Party; and (ii) the Assigned Causes of Action. The Schedule of Assigned Causes of Action was filed as Exhibit C to the Plan Supplement [Docket Nos. 557 and 562]. As set forth and further described in the Schedule of Assigned Causes of Action, the Schedule of Assigned Causes of Action include (1) Causes of Action related to Avoidance Actions, including specifically all potential preference claims under section 547 of the Bankruptcy Code and potential fraudulent transfer claims under sections 544 and 548 of the Bankruptcy Code; (2) Causes of Action related to current or former insiders of the Debtors or related entities, excluding the Released Debtor D&Os or any other Released Party; (3) Causes of Action related to the Debtors' operations, management, capital structure, and business activities, including any fraud or other facts described in the Disclosure Statement and Plan; and (4) defenses to General Unsecured Claims.

11. The Debtors are not aware of any specific, colorable claims or Designated Causes of Action against the Non-Released Debtor D&Os or any other parties. Likewise, the Debtors are not aware of specific, actionable Avoidance Actions against any party. With respect to potential Avoidance Actions, the Debtors' statements of financial affairs were filed on April 13, 2025, in

[4] The "Designated Causes of Action" means the following Causes of Action: (i) breach of fiduciary duty, (ii) aiding and abetting breach of fiduciary duty, (iii) breach of contract, (iv) corporate waste, (v) abuse of control, (vi) gross mismanagement, (vii) willful misconduct, (viii) fraud, (ix) aiding and abetting fraud, (x) actual fraudulent transfer, (xi) constructive fraudulent transfer, (xii) preferential transfer, (xiii) negligent misrepresentation, (xiv) conversion, (xv) unlawful stock redemption and dividends, (xvi) unjust enrichment, (xvii) conspiracy, (xviii) equitable subordination, (xix) recharacterization, and (xx) any Cause of Action arising from the same core of operative facts as delineated in (i) through (xix). (Plan, Art. I.51.)

each Debtor's respective chapter 11 case. The statements of financial affairs include the required disclosures of certain transfers made before filing for bankruptcy, including certain payments or transfers made to creditors within 90 days before filing the cases (SOFA item 3), payments or other transfers of property made within one year before filing the cases that benefited any insider (SOFA item 4), repossessions, foreclosures, and returns (SOFA item 5), and setoffs (SOFA item 6). In the aggregate, the Debtors' statements of financial affairs reflect approximately $41,596,112 of prepetition transfers (collectively, the "Prepetition Transfers"), including approximately $38.7 million of payments and transfers in the 90 days prior to the Petition Date and $2.4 million of payments or transfers to insiders of the Debtors (excluding ordinary course payments to Released Debtor D&Os).[5]

12. Although the Debtors are not aware of any specific Causes of Action, including any Avoidance Actions, the Plan and Creditors' Committee Settlement provide for the establishment of the Litigation Trust and appointment of a Litigation Trustee selected by the Creditors' Committee. The Litigation Trust Claims will be controlled by the Litigation Trustee, who would be empowered to investigate and pursue any Litigation Trust Claims, and the Litigation Trust will have access to the Debtors' books and records, as well as $1 million of initial funding, to investigate whether there are colorable claims, including whether any Prepetition Transfers are avoidable and recoverable for the benefit of General Unsecured Creditors.

2. Known or Suspected Claims or Causes of Action Against Released Parties

13. The Debtors are not aware of any claims or Causes of Action by any creditors or parties in interest against any of the Released Parties. The scope of the Released Parties is narrowly

[5] The disclosure of a Prepetition Transfer in the Debtors' statements of financial affairs does not mean that such Prepetition Transfer is avoidable or recoverable, and the Debtors make no representations regarding the characterization of any Prepetition Transfer.

tailored to only those parties who have contributed to the Debtors' restructuring and sale efforts or are otherwise contributing value under the Plan, including the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders,[6] and the three Released Debtor D&Os (Lawrence Hirsh, the Debtors' independent manager; Andrew Hede, the Debtors' Chief Restructuring Officer; and Brian Smith, the Debtors' Chief Operating Officer). To the extent that any Releasing Party would potentially have a claim against any of these Released Parties, such a claim would likely, if not necessarily, be a derivative claim that is otherwise settled and released by the Debtors or exculpated pursuant to the Debtor Release and the exculpation, respectively. Accordingly, any additional value of claims released by the Third-Party Release is minimal, if anything.

14. The primary value of the Third-Party Release under these circumstances is in providing finality and increased certainty to the Released Parties. The Released Debtor D&Os and the Debtors' Professionals have contributed substantially to the Debtors' prepetition and postpetition restructuring and sale efforts, whose efforts resulted in the successful sales of the Debtors' operating business units as going concerns, thereby preserving hundreds of jobs. Additionally, the Senior Secured Parties are, *inter alia*, funding the Litigation Trust and the Wind Down of the Debtors' Estates, for the benefit of all stakeholders, where they otherwise have no legal obligations to do so.

15. The Released Parties should not be punished by the fact that more proceeds were not available in these Chapter 11 Cases for distribution to General Unsecured Claims and other stakeholders. As detailed in the *Declaration of Andrew D.J. Hede in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 8] (the "First Day Declaration"), the Debtors

[6] The DIP Agent, DIP Lenders, Prepetition Agent, and Prepetition Lenders are referred to herein collectively as the "Senior Secured Parties".

pursued multiple, extensive marketing and sale processes since July 2023. (First Day Declaration ¶¶ 24–29.) The Debtors were supported throughout the process by their Prepetition Lenders, including by providing additional bridge financing prior to the Petition Date as well as providing the DIP Facility to ensure that the Debtors would be able to run a fulsome marketing process that maximizes the value of the Debtors' assets. Notwithstanding the substantial loss that the Senior Secured Parties are facing, the Creditors' Committee Settlement generates potential value for General Unsecured Claims where they would otherwise have no potential for recovery without the contribution of the Released Parties.

16. Accordingly, the Debtors believe that the value provided to the Estates by the Released Parties is commensurate with – or exceeds – the value to be received through the Third-Party Release.

3. The Creditors' Committee Settlement is in the Best Interests of Creditors

17. The Debtors do not purport to speak on behalf of the Creditors' Committee or any analysis that they undertook regarding the Creditors' Committee Settlement, including the Third-Party Release. However, the Debtors believe that the Creditors' Committee Settlement represents the best possible outcome for General Unsecured Creditors in these Chapter 11 Cases. As the Court is aware, the Prepetition Secured Lenders and DIP Lenders hold valid, perfected senior liens on substantially all of the Debtors' assets. As such, General Unsecured Creditors are entitled to no distributions or recovery in these Chapter 11 Cases. However, through the good faith efforts and negotiations among the Debtors and their primary constituencies, including the Senior Secured Parties and the Creditors Committee, the parties ultimately entered into the Creditors' Committee Settlement, which provides for the prospect of a recovery to Holders of General Unsecured Claims. In exchange for funding the Litigation Trust for the benefit of Holders of General Unsecured

Claims, among other things, the Creditors' Committee Settlement and Plan contemplate the Third-Party Release.

18. As set forth in the Initial Confirmation Brief, the Creditors' Committee Settlement is the product of extensive, arms'-length negotiations among the Debtors, the Creditors' Committee, and the Senior Secured Parties, each of whom is represented by sophisticated counsel. (Initial Confirmation Brief ¶¶ 73–78, 94.) Without the Creditors' Committee Settlement, general unsecured creditors would receive no distribution or recovery. Instead, General Unsecured Creditors now have the benefit of the Litigation Trust Claims and $1 million of funding. The claims and causes of action released pursuant to the Third-Party Release are of relatively limited value to the Releasing Parties in light of the prospect of a recovery where Holders of General Unsecured Claims are otherwise not entitled to any recovery. Accordingly, the Creditors' Committee Settlement, including the Third-Party Release, is in the best interests of stakeholders, including the Holders of General Unsecured Claims.

4. The Status and Treatment of the DIP Facility

19. The Debtors understand that the outstanding balance under the DIP Facility is approximately $16.9 million, and that the amount outstanding as of the Effective Date is anticipated to be substantially the same, subject to accrual of additional interest. Notably, no interest has been paid on the DIP Facility during these Chapter 11 Cases. The Debtors further understand that, notwithstanding the superpriority administrative expense status of the DIP Lender Claims approved pursuant to the DIP Order, the DIP Lenders agree that any unpaid amount of the DIP Facility, including the accrued and unpaid interest, will ultimately be treated as a Prepetition Lender Deficiency Claim. Therefore, the Debtors estimate that the unpaid amount of the DIP Facility that will be converted to a Prepetition Lender Deficiency Claim will be more than $16.9 million. Absent approval of the Plan and the Creditors' Committee Settlement, the unpaid DIP

Lender Claims would be entitled to any proceeds of the Estates until paid in full, which will almost certainly result in no recovery for Holders of General Unsecured Claims. This fact cannot be overlooked when assessing the level of consideration generated for the creditors impacted by the narrowly-tailored Third-Party Release.

CONCLUSION

20. The Releasing Parties have consented to the Third-Party Release. Moreover, as set forth herein and in the Initial Confirmation Brief, the creditors affected by the Third-Party Release will receive "substantial consideration" based on the facts and circumstances of these Chapter 11 Cases. Among other things, the consideration includes: (a) contribution of the Litigation Trust Claims to the Litigation Trust for the benefit of General Unsecured Claims; (b) $1 million of initial funding for the Litigation Trust, which can be used to investigate and pursue Litigation Trust Claims; (c) the right of the Creditors' Committee to select the Litigation Trustee, who will control the investigation and pursuit of Litigation Trust Claims; (d) reduction in priority of any unpaid DIP Lender Claims and the DIP Liens to be treated *pari passu* with General Unsecured Claims; and (e) the funding of the Wind Down Cash Amount in the amount of $675,000 to fund the orderly wind down of the Estates.

21. Without the Third-Party Release under the Plan, there would likely not be a settlement between the Senior Secured Parties and the Creditors' Committee that provides substantial funding to investigate and pursue potential recoveries for the benefit of General Unsecured Claims. While there is no certainty that General Unsecured Creditors will ultimately receive a material recovery on their claims, before the Creditors' Committee Settlement (including the Third-Party Release), there was certainty that General Unsecured Creditors would receive nothing. Accordingly, the Plan is in the best interests of all stakeholders and should be confirmed.

WHEREFORE, for the reasons set forth herein and in the Confirmation Brief, the Debtors respectfully request that the Court confirm the Plan and grant such other relief as the Court deems just and equitable.

Dated: August 19, 2025

Respectfully submitted,

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