



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 13, 2023

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

Northwest Senior Housing Corporation, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

**ORDER REGARDING PECUNIARY LOSS  
PORTION OF INTERCITY INVESTMENT INC.'S CURE CLAIM  
PURSUANT TO SECTION 365(b)(1)(B) OF THE BANKRUPTCY CODE**

Upon the *Notice of Intercity Investment Properties, Inc.'s Statement Regarding Lease Cure Amount* [Docket No. 965], *The Initial Plan Sponsors' Pretrial Brief Objecting to Fees and Expenses Asserted by Intercity Investment Properties, Inc. as Section 365(b) Pecuniary Damages* [Docket No. 1166], *Debtors' Joinder to the Initial Plan Sponsors' Pretrial Brief Objecting to Fees and Expenses Asserted by Intercity Investment Properties, Inc. as Section 365(b) Pecuniary Damages* [Docket No. 1167], and *Intercity Investment Properties, Inc.'s Pre-Hearing Brief on*

<sup>1</sup> The Debtors in the Chapter 11 Cases (the "Chapter 11 Cases"), along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.



*Pecuniary Cure Claim* [Docket No. 1181] (collectively, the “Pecuniary Loss Claim Pleadings”); and upon consideration of Intercity Investment Properties, Inc.’s (the “Landlord”) asserted pecuniary loss claim of \$12,067,303.81 dated February 10, 2023 [Docket No. 1187-7] (the “Asserted Pecuniary Loss Claim”); and upon the record of the evidentiary hearings on the Pecuniary Loss Claim Pleadings and the Asserted Pecuniary Loss Claim held on February 13-15, 2023 (the “Hearing”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of these proceeding in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Pecuniary Loss Claim Pleadings having been given; and it appearing that no other or further notice of the Pecuniary Loss Claim Pleadings is required; and after due deliberation thereon; and for the reasons stated on the record at the bench ruling held by this Court on March 24, 2023 (the “Bench Ruling”), which shall be and is hereby incorporated into the Court’s separate order confirming the *Fourth Amended Chapter 11 Plan of the Plan Sponsors Dated February 17, 2023* [Docket No. 1241] (the “Plan”) and which findings in the Bench Ruling are expressly incorporated into this Order; and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, AND NOTICE IS HEREBY GIVEN, THAT:<sup>2</sup>**

1. All fees and expenses of The Monument Group LLC, which totaled \$203,821.81 as of February 1, 2023, are not compensable under the terms of the Ground Lease entered into by and between the Landlord and Northwest Senior Housing Corporation and dated as of November,

---

<sup>2</sup> This Order constitutes this Court’s findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute findings of fact, even if they are stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law, even if they are stated as findings of fact.

1999 (the “Ground Lease”), applicable nonbankruptcy law and section 365 of the Bankruptcy Code, and are hereby **DISALLOWED** in their entirety.

2. All fees and expenses of Kong Capital LLC (“Kong”), which totaled \$3,000,000.00 as of January 31, 2023, are not compensable under the terms of the Ground Lease, applicable nonbankruptcy law and section 365 of the Bankruptcy Code, and are hereby **DISALLOWED** in their entirety.

3. Fees incurred by Getzler Henrich & Associates (“Getzler”) that are attributable to the case captioned *In re Northwest Senior Housing Corporation, et al.* Case No. 22-30659 (MVL) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Main Bankruptcy Case”), which totaled \$68,185.00 as of January 31, 2023, are compensable and hereby **ALLOWED** as reasonable fees pursuant to section 365(b) of the Bankruptcy Code and Section 5.16(a) of the Ground Lease and shall be included in the allowed pecuniary loss claim (as further calculated herein, the “Allowed Pecuniary Loss Claim”). To the extent the Landlord has incurred any additional costs for Getzler’s services in connection with the Main Bankruptcy Case after January 31, 2023, the Landlord may file a further request with the Court pursuant to the terms of paragraph 14 hereof, and all rights of all parties relating to the allowance of such additional fees and expenses are expressly reserved with respect thereto.

4. Fees incurred by Terracon Consultants, Inc. (“Terracon”), which totaled \$58,225.00 through January 26, 2023, are compensable and are hereby **ALLOWED** as reasonable fees pursuant to section 365(b) of the Bankruptcy Code and Section 5.16(a) of the Ground Lease and shall be included in the Allowed Pecuniary Loss Claim. To the extent the Landlord has incurred additional costs for Terracon’s services in connection with the Main Bankruptcy Case after January 26, 2023, the Landlord may file a further request with the Court pursuant to the terms

of paragraph 14 hereof, and all rights of all parties relating to the allowance of such additional fees and expenses are expressly reserved with respect thereto.

5. All fees and expenses of Bielli & Klauder, LLC, which totaled \$27,682.50 as of January 26, 2023, are not compensable under the terms of the Ground Lease, applicable nonbankruptcy law and section 365 of the Bankruptcy Code, and are hereby **DISALLOWED** in their entirety.

6. The Landlord's request for compensation of its fees and expenses relating to that certain adversary proceeding titled as *Northwest Senior Housing Corporation v. Intercity Investment Properties, Inc. and Kong Capital, LLC* and bearing case number 22-03040 (the "Adversary Proceeding") shall be held in abeyance with all rights reserved pending a final determination of the Adversary Proceeding. Once a prevailing party in the Adversary Proceeding is established, the parties may file a further request with the Court, and the Court shall determine those fees and expenses that may be compensable under the terms of the Ground Lease, applicable nonbankruptcy law, and to the extent applicable, section 365 of the Bankruptcy Code, with all rights reserved.

- a. For the avoidance of doubt, the Debtors' estates shall not be held liable for any legal fees and expenses incurred by, on behalf of, or in the representation of Kong in the Adversary Proceeding.
- b. The Debtors shall establish an escrow in the amount of \$1,000,000 (the "Cure Escrow") pursuant to section 502(c) of the Bankruptcy Code toward payment of any potential recovery by the Landlord with respect to any damages incurred in the Adversary Proceeding pursuant to section 5.16(b) of the Ground Lease.

- c. Judgment regarding the following fees is therefore reserved without prejudice, pending a determination of the prevailing party in the Adversary Proceeding:
- i. Levenfeld Pearlstein, LLC (“LP”) fees and expenses incurred in the Adversary Proceeding in the amount of \$2,112,633.81 through January 31, 2023;
  - ii. Additional LP fees incurred in connection with the Adversary Proceeding but erroneously recorded as fees attributable to the Main Bankruptcy Case in the amount of \$33,753.75 through January 31, 2023;
  - iii. Jackson Walker, LLP (“JW”) fees and expenses incurred in the Adversary Proceeding in the amount of \$1,760,960.69 through January 31, 2023;
  - iv. Additional JW fees incurred in connection with the Adversary Proceeding but erroneously recorded as fees attributable to the Main Bankruptcy Case in the amount of \$207,649.00 through January 31, 2023;
  - v. Discovery costs shared with UMB Bank, N.A. in the amount of \$7,033.80 through January 26, 2023; and
  - vi. Fees incurred by Getzler in the Adversary Proceeding in the amount of \$316,677.50 through January 31, 2023.

7. All legal fees attributable to the redaction of invoices in the amount of \$88,131.00 are not compensable under the terms of the Ground Lease, applicable nonbankruptcy law and section 365 of the Bankruptcy Code, and are hereby **DISALLOWED** in their entirety.

8. Pursuant to the *Certification of Counsel Regarding Expert Witness Fees of Leif M. Clark Consulting PLLC* dated April 3, 2023 [Docket No. 1378], the Initial Plan Sponsors<sup>3</sup> paid the

---

<sup>3</sup> The “Initial Plan Sponsors” are UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds and in its capacity as a lender under the DIP Credit Agreement.

Honorable Leif Clark \$70,228.72 in connection with his engagement as an expert in these proceedings, which amount shall be deducted from the Asserted Pecuniary Loss Claim as a sanction for the Landlord's over-redaction of the invoices which Judge Clark was tasked with reviewing.

9. Pursuant to Section 5.16(b) of the Ground Lease, the Landlord was not the prevailing party with respect to the following contested matters in the Main Bankruptcy Case and, thus, the legal fees of the Landlord attributable to the following motions shall be **DISALLOWED**:

- a. *Motions to Restrict Public Access* [Docket Nos. 146, 803, 806, and 807]:  
\$10,614.00;
- b. *Intercity Investment Properties, Inc.'s Limited Objection to Debtors' Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 206]: \$1,046.25;
- c. *Intercity Investment Properties, Inc.'s Motion Seeking an Order (I) Compelling Debtors to Comply with the Adequate Protection Order; (II) Compelling Debtors to Pay Real Estate Taxes; and (III) Granting Related Relief* [Docket No. 813]:  
\$26,096.25;
- d. *Intercity Investment Properties, Inc.'s Motion for Authority to Conduct Examinations Under Federal Rule of Bankruptcy Procedure 2004* [Docket No. 817]: \$20,555.75;
- e. *Intercity Investment Properties, Inc.'s Objection to Debtors' Motion for Entry of an Order Extending the Debtors' Deadline to Assume or Reject Executory Contracts and Unexpired Leases* [Docket No. 864]: \$7,012.50;

- f. *Intercity Investment Properties, Inc.’s Motion to Compel Discovery from Debtors* [Docket No. 992]: \$11,708.50; and
- g. *Emergency Motion of Initial Plan Sponsors to Strike Intercity Investment Properties, Inc.’s Statement Regarding Lease Cure Amount and for Extension of Sale and Confirmation Deadlines* [Docket No. 982] and *Intercity Investment Properties, Inc.’s Amended Statement of Cure Claims with Respect to Existing Defaults Under Lease Pursuant to 11 U.S.C. 365(b)(1)(A)* [Docket No. 1023]: \$131,230.25.

10. After taking into account the specific deductions attributable to fees and expenses asserted in the Main Bankruptcy Case as detailed herein, the remaining legal fees of LP and JW in the amount of \$3,698,491.44 are hereby reduced by twenty percent (20%), which is \$739,698.29, for the reasons provided in the Bench Ruling.

11. The Asserted Pecuniary Loss Claim also includes \$275,795.01 in “Intercity Investment Properties, Inc. Lease Amounts” which represents the requested late fees (the “Escrowed Late Fees”) requested by the Landlord in *Intercity Investment Properties Inc.’s Motion for Adequate Protection* [Docket No. 60] and escrowed in that certain escrow account at Regions Bank pursuant to the *Agreed First Supplemental Order Granting in Part, and Denying in Part, Intercity Investment Properties, Inc.’s Motion for Adequate Protection* [Docket. No. 704]. For purposes of this Order, the Escrowed Late Fees shall be excluded from the Allowed Pecuniary Loss Claim and continue to remain in escrow at Regions Bank pending further order of this Court. The Landlord may request the Escrowed Late Fees in connection with any additional fee request.

12. In accordance with the foregoing, the Allowed Pecuniary Loss Claim through the dates set forth in the Asserted Pecuniary Loss Claim is \$3,014,974.43. The Allowed Pecuniary Loss Claim and the Cure Escrow shall be funded from the Net Sale Proceeds (as defined in the Plan). The Allowed Pecuniary Loss Claim shall be paid to the Landlord within two (2) business days after the Closing.

13. This Court retains jurisdiction to hear and consider all disputes arising from the interpretation or implementation of this Order.

14. All rights of all parties relating to the allowance of additional fees and expenses are expressly reserved with respect thereto. All parties seeking allowance of such additional fees and expenses must provide copies of the invoices for which allowance is sought (if by Landlord to Plan Sponsors, if by Debtors to Landlord, and by any party to the Court).

**### End of Order ###**

Submitted by:

J. Frasher Murphy (SBN 24013214)  
Thomas J. Zavala (SBN 24116265)  
Haynes and Boone, LLP  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219  
Telephone: (214) 651-5000  
[frasher.murphy@haynesboone.com](mailto:frasher.murphy@haynesboone.com)  
[tom.zavala@haynesboone.com](mailto:tom.zavala@haynesboone.com)

Daniel S. Bleck (Admitted *Pro Hac Vice*)  
Eric Blythe (Admitted *Pro Hac Vice*)  
Kaitlin R. Walsh (Admitted *Pro Hac Vice*)  
Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC  
One Financial Center  
Boston, MA 02111  
Telephone: (617) 546-6000  
[dsbleck@mintz.com](mailto:dsbleck@mintz.com)  
[erblythe@mintz.com](mailto:erblythe@mintz.com)  
[krwalsh@mintz.com](mailto:krwalsh@mintz.com)  
*Counsel to Initial Plan Sponsors*



and

Trinitee G. Green (SBN 24081320)  
Polsinelli PC  
2950 N. Harwood, Suite 2100  
Dallas, Texas 75201  
Telephone: (214) 397-0030  
Facsimile: (214) 397-0033  
[tggreen@polsinelli.com](mailto:tggreen@polsinelli.com)

Jeremy R. Johnson (Admitted *Pro Hac Vice*)  
Polsinelli PC  
600 3rd Avenue, 42nd Floor  
New York, New York 10016  
Telephone: (212) 684-0199  
Facsimile: (212) 684-0197  
[jeremy.johnson@polsinelli.com](mailto:jeremy.johnson@polsinelli.com)

*Counsel to Debtors and  
Debtors in Possession*