

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

In re:)	Chapter 11
ENVIVA INC., <i>et al.</i> ,)	Case No. 24-10453 (BFK)
Debtors. ¹)	(Jointly Administered)

CONSENT ORDER ON THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS’ MOTION FOR ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY RULE 2004 AUTHORIZING THE EXAMINATION OF AND COMPELLING THE PRODUCTION OF DOCUMENTS BY THE DEBTORS

THIS MATTER COMES before the Court on the *Motion for Authority to Examine the Debtors Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* (the “Motion”) filed by the Official Committee of Unsecured Creditors (the “Committee”) of Enviva Inc., *et al.* (collectively, the “Debtors”), and the Debtors’ *Limited Objection to the Official Committee of Unsecured Creditors’ Motion for Authority to Examine the Debtors Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* (the “Objection”). It appearing that the parties, by their respective counsel, have resolved these matters as follows:

1. The Debtors and the Committee have agreed as follows:
 - A. Debtors will produce on a rolling basis, after a privilege review, the deal documents and other non-email/chat documents provided to Baker Botts² and Kutak Rock for the Investigation.
 - B. Debtors will produce on a rolling basis, after a privilege review, the responsive, non-privileged hits generated by the search terms previously disclosed by Baker Botts to the Committee from the same custodians used by Baker Botts.

¹ Due to the large number of Debtors in these jointly administered 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 may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://kcellc.net/enviva>. The location of the Debtors’ service address is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

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



- C. Debtors will add the following directors as custodians and will apply the same search terms and parameters used by Baker Botts or Kutak Rock for the other custodians³: (i) Ralph Alexander; (ii) Gary Whitlock; (iii) Jim Derryberry; (iv) Pierre Lapeyre Jr.; and (v) David Leuschen (together the “Additional Directors”). For the avoidance of doubt, the Debtors will collect, or work with the appropriate counsel to collect, the Additional Directors’ individual documents and emails.
- D. Debtors will produce the below information in response to the Committee’s request for documents regarding the solvency of the various Debtor entities at the time of the relevant transactions within the six years preceding the Petition Date.
- i. Any valuation analyses, fairness opinions, solvency analyses, liquidation analyses or presentations concerning valuation, fairness opinions, solvency analyses or liquidation analyses for each entity of the Debtors.
 - ii. All budget, financial projections, financial analyses, earnings forecasts, or other similar reports or forecasts prepared for the board or other governing body for each entity of the Debtors.
 - iii. Documents sufficient to show the results of and basis for any goodwill impairment analyses or testing for each entity of the Debtors.
 - iv. Documents sufficient to show the internal annual budgets for the past six years preceding the Petition Date as well as the remainder of 2024, including any actual versus budget/forecast financial reports and variance analyses.
 - v. Current and historical capitalization tables on a quarterly basis or such other basis as such tables are prepared in the ordinary course of business.
 - vi. Copies of past financial statements, including balance sheet, income statement and statement of cash flows, by reportable units by month (or such other duration as such statements are prepared in the ordinary course of business) on a consolidating and consolidated basis; to be produced in excel or native format to the extent available.
 - vii. The monthly, quarterly, and/or annual financial packages provided to the Debtors’ boards of directors or CEO or CFO.
 - viii. Quarterly trial balances by entity for the last six years and current chart of accounts and trial balance mapping.
 - ix. Copies of all offering memoranda, lender presentations, and/or internal management presentations from the last six years related to any attempt or offer to sell Debtors’ assets.

³ The parties agree, however, that for directors who are not employees of the Debtors, an additional search term (e.g., “& Enviva”) may be applied to restrict searches to Enviva-related matters.

- E. Debtors will conduct rolling productions of the above categories of documents and will make best efforts to complete production of non-privileged documents by the Document Discovery Deadline.⁴
 - F. Debtors will produce a privilege log as soon as possible after the Document Discovery Deadline.
 - G. After the Committee has had the opportunity to review the above production of documents the Committee can request that the Debtors produce documents and communications related to: (i) the Sampson, NC Drop-Down Transaction (10/1/2016-12/31/2016); (ii) the Wilmington, NC Drop-Down Transaction (8/1/2017-10/15/2017); (iii) the Hamlet, NC Drop-Down Transaction (2/1/2019-4/15/2019); (iv) the Greenwood, SC Drop-Down Transaction (5/1/2020-7/15/2020); (v) Lucedale, MS Drop-Down Transaction (5/1/2021-7/15/2021); (vi) dividend payments or other distributions made by Enviva to equity holders and the general partner of Enviva since January 1, 2018; and (vii) the Simplification Transaction (8/1/2021-11/1/2021), following good faith discussions surrounding appropriate search terms and custodians.
 - i. After the parties agree to search terms and custodians, Debtors will have two (2) weeks to produce non-privileged documents.
 - ii. Debtors will produce a privilege log as soon as possible after the two-week production deadline.
 - H. All documents produced by the Debtors in response to this discovery request under Rule 2004 shall also be provided to counsel for the Ad Hoc Group, as defined in the Nunziata Declaration.
 - I. The Committee has the ability to notice Debtors' witnesses for 2004 depositions. Debtors retain all their rights in connection with those depositions. The Ad Hoc Group shall be permitted to attend and participate in any such 2004 depositions, examinations, or interviews scheduled in connection herewith.
2. The Committee reserves the right to serve additional 2004 discovery on the Debtors and other parties;

⁴ For purposes of this Consent Order, "Document Discovery Deadline" means that the document production will be substantially complete at least 21 days in advance of the Debtors' milestone for the filing of the Plan and Disclosure Statement (as those terms are defined in the RSA) with the understanding that, in any event, Debtors will use reasonable efforts to complete the document production as close to June 28, 2024 as reasonably practicable. Debtors further agree to make rolling productions as soon as practicable throughout the time period in advance of the Document Discovery Deadline.

3. The terms and conditions of this Consent Order shall be immediately effective and enforceable upon its entry; and
4. This Court shall retain exclusive jurisdiction over any and all matters arising from and/or related to the implementation and/or interpretation of this Order. In the event there are any disputes in connection with any aspect of this Order that the Debtors and the Committee are unable to resolve notwithstanding their good faith efforts, either party may seek an expedited hearing on the dispute and shortened response deadlines without the need to file a motion pursuant to Local Rules 9013-1(N) and (O). In such event, the Debtors and the Committee shall jointly contact chambers and request that the Court schedule a hearing and fix the relevant filing deadlines.

IT IS SO ORDERED.

Date: Jun 24 2024

/s/ Brian F Kenney

Brian F. Kenney, Judge
United States Bankruptcy Court for the Eastern
District of Virginia

Entered On Docket: Jun 25 2024

WE ASK FOR THIS:

/s/ Kristen E. Burgers

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Lead Counsel to the Official Committee of Unsecured Creditors

**CERTIFICATION OF ENDORSEMENT UNDER
LOCAL BANKRUPTCY RULE 9022-1(C)**

I hereby certify that the foregoing Order has been endorsed by and/or served on all necessary parties.

/s/ Jeremy S. Williams
Counsel