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

In Re: .  
LAVIE CARE CENTERS, LLC, et al., . Docket No. 24-55507-pmb  
Debtors. .  
. . . . . Newnan, GA  
. . . . . June 4, 2024  
1:45 PM

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE PAUL BAISIER  
UNITED STATES BANKRUPTCY COURT

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Phoenix, AZ 85020  
(800) 257-0885

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1 Debtors' Emergency Motion for Entry of Order (I) Authorizing  
2 the Debtors to (A) Prepare a List of Creditors in Lieu of  
3 Submitting a Formatted Mailing Matrix and (B) File a  
4 Consolidated List of the Debtors' 30 Largest Unsecured  
5 Creditors, (II) Authorizing the Debtors to Redact Certain  
6 Personal Identification Information for Individual Creditors,  
7 (III) Approving the Form and Manner of Notifying Creditors  
8 of Commencement of These Chapter 11 Cases, and (IV)  
9 Authorizing the Debtors to File Their Monthly Operating  
10 Reports on a Consolidated Basis filed by Daniel M. Simon on  
11 behalf of LaVie Care Centers, LLC. (Simon, Daniel) Modified on  
12 6/2/2024 (scm).

13  
14 Debtors' Emergency Application for Entry of Order Authorizing  
15 the Retention and Employment of Kurtzman Carson Consultants  
16 LLC as Claims, Noticing, Solicitation, and Administrative  
17 Agent Effective as of the Petition Date filed by Daniel M.  
18 Simon on behalf of LaVie Care Centers, LLC. (Simon, Daniel)  
19 Modified on 6/3/2024 (jlc).

20  
21 Debtors' Emergency Motion for Entry of Order (I) Extending  
22 Time to File Schedules of Assets and Liabilities and  
23 Statements of Financial Affairs and (II) Granting Related  
24 Relief filed by Daniel M. Simon on behalf of LaVie Care  
25 Centers, LLC. (Simon, Daniel) Modified on 6/3/2024 (jlc).



1 Debtors' Emergency Motion for Entry of Interim and Final  
2 Orders (I) Authorizing the Implementation of Procedures to  
3 Maintain and Protect Confidential Health Information as  
4 Required by Applicable Privacy Rules and (II) Granting Related  
5 Relief filed by Daniel M. Simon on behalf of LaVie Care  
6 Centers, LLC. (Simon, Daniel) Modified on 6/3/2024 (scm).  
7 Modified on 6/3/2024 (jlc).

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9 Debtors' Emergency Motion for Entry of Interim and Final  
10 Orders (I) Authorizing the Debtors to Maintain and Continue  
11 Resident Programs and Honor Prepetition Obligations Related  
12 Thereto, and (II) Granting Related Relief filed by Daniel M.  
13 Simon on behalf of LaVie Care Centers, LLC. (Simon, Daniel)  
14 Modified on 6/3/2024 (jlc).

15

16 Debtors' Emergency Motion for Entry of Interim and Final  
17 Orders Authorizing Payment of Prepetition Obligations Owed to  
18 Resident Care Vendors filed by Daniel M. Simon on behalf of  
19 LaVie Care Centers, LLC. (Simon, Daniel) Modified on 6/3/2024  
20 (jlc).

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1 Debtors' Emergency Motion for Entry of Interim and Final  
2 Orders Authorizing Debtors to (I) Maintain Existing Insurance  
3 Policies and Surety Bonds and Pay All Obligations Arising  
4 Thereunder; (II) Renew, Revise, Extend, Supplement, Change, or  
5 Enter into New Insurance Policies and Surety Bonds; and (III)  
6 Granting Related Relief filed by Daniel M. Simon on behalf of  
7 LaVie Care Centers, LLC. (Simon, Daniel) Modified on 6/3/2024  
8 (scm). Modified on 6/3/2024 (jlc).

9  
10 Debtors' Emergency Motion for Entry of Interim and Final  
11 Orders (I) Authorizing Debtors to Pay Certain Prepetition  
12 Taxes, Fees, and Related Obligations and (II) Granting Related  
13 Relief filed by Daniel M. Simon on behalf of LaVie Care  
14 Centers, LLC. (Simon, Daniel) Modified on 6/3/2024 (jlc)

15  
16 Debtors' Emergency Motion for Entry of Interim and Final  
17 Orders (I) Approving Debtors' Proposed Form of Adequate  
18 Assurance of Payment; (II) Establishing Procedures for  
19 Resolving Objections by Utility Providers; and (III)  
20 Prohibiting Utility Providers from Altering, Refusing, or  
21 Discontinuing Service filed by Daniel M. Simon on behalf of  
22 LaVie Care Centers, LLC. (Simon, Daniel) Modified on 6/3/2024  
23 (jlc).

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1 Debtors' Emergency Motion for Entry of Interim and Final Order  
2 Authorizing Debtors to (I) Pay Prepetition Wages,  
3 Compensation, and Employee Benefits, (II) Continue Certain  
4 Employee Benefit Programs in the Ordinary Course, and (III)  
5 Granting Related Relief filed by Daniel M. Simon on behalf of  
6 LaVie Care Centers, LLC. (Simon, Daniel) Modified on 6/3/2024  
7 (jlc).

8  
9 Debtors' Emergency Motion for Entry of Interim and Final  
10 Orders (I) Authorizing the Debtors to (A) Continue to Operate  
11 Their Existing Cash Management System, (B) Maintain Existing  
12 Bank Accounts and Business Forms and Honor Certain Prepetition  
13 Obligations Related to the Use Thereof, (C) Maintain  
14 Purchasing Card Program and Honor Prepetition Obligations  
15 Related Thereto, and (D) Continue to Perform Intercompany  
16 Transactions; (II) Extending the Time for the Debtors to  
17 Comply with 11 U.S.C. Section 345(b) Deposit and Investment  
18 Requirements; and (III) Granting Related Relief filed by  
19 Daniel M. Simon on behalf of LaVie Care Centers, LLC. (Simon,  
20 Daniel) Modified on 6/3/2024 (jlc).

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1 Debtors' Emergency Motion for Entry of Interim and Final  
2 Orders (I) Authorizing the Debtors to (A) Obtain Postpetition  
3 Financing and (B) Utilize Cash Collateral, (II) Granting  
4 Adequate Protection to Prepetition Secured Parties, (III)  
5 Modifying the Automatic Stay, (IV) Scheduling a Final Hearing,  
6 and (V) Granting Related Relief filed by Daniel M. Simon on  
7 behalf of LaVie Care Centers, LLC. (Simon, Daniel) Modified on  
8 6/3/2024 (jlc).

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Transcribed by: River Wolfe



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1 Also Present: Michael Krakovsky  
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3 M. Benjamin Jones  
4 Ankura Consulting  
5 Russell A. Perry  
6 Ankura Consulting  
7 Rohid Ahmed  
8 Ankura Consulting  
9 Evan Gershbein (ZOOM)  
10 Kurtzman Carson  
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I N D E X

EXHIBITS:

No.	Description	Marked	Admitted
DEBTORS':			
--	Declaration of Mr. Jones		15
--	Declaration of Mr. Gershbein		44
--	Declaration of Mr. Krakovsky		95

RULINGS:

	PAGE	LINE
Debtors' retention application for Kurtzman Carson Consultants LLC is approved, subject to proposed revisions and U.S. Trustee signoff	47	7
Debtors' motion to extend time to file schedules and statements is granted	48	24
Debtors' confidentiality motion is granted	50	25
Debtors' motion seeking authority to pay pre-petition refunds and third-party payer overpayments is granted	60	12
Debtors' motion seeking to pay pre-petition amounts owed to certain resident care and safety vendors is granted	69	22
Debtors' insurance and surety bond motion is granted	74	11
Debtors' taxes motion is granted	79	1
Debtors' utilities motion is granted	83	14
Debtors' wages motion is granted, subject to U.S. Trustee modifications	89	18
Debtors' cash management motion is granted	93	4
Debtors' DIP financing motion is granted	111	12



Colloquy

1 THE CLERK: Good afternoon, Your Honor. Today is  
2 June 4th, 2024. The time is now 1:45 p.m. We are here for  
3 the specially set hearing for the complex Chapter 11 cases  
4 regarding first day matters. The first day matters are  
5 dockets number 4 through 15 on the main case at 24-5557, LaVie  
6 Care Centers LLC, et al.

7 THE COURT: Good afternoon, everyone. Welcome to  
8 Newnan and to the W. Homer Drake, Jr. Courtroom. For those of  
9 you who are here in person, thanks for trekking out all this  
10 way. For those that came from out of town, it was hopefully  
11 not any harder for you to get here than it would have been get  
12 to downtown Atlanta. For those from Atlanta, welcome back.  
13 Many of you been here before, but probably not for a long  
14 time.

15 We're here today not because I like sitting in  
16 Newnan, although I do. Rather, we had a water leak in the  
17 Richard Russell Building, I think related to the broader water  
18 unpleasantness that Atlanta's been experiencing. And as a  
19 result, some of our computer equipment got wet. As I'm told  
20 now that we won't be back in courtrooms in the Russell  
21 Building until at least next Monday. So it's probably a good  
22 thing that we decided to not go there, but to come here. So  
23 here we are.

24 With that introduction, we'll get to the matters of  
25 the day. These are all obviously emergency matters filed



Colloquy

1 early in this case. Looks like most of them on an interim  
2 basis today, with final hearings later.

3 With that, Mr. Simon, are you taking the lead?

4 MR. SIMON: I am. I'll start.

5 THE COURT: Very good. Look forward to hearing from  
6 you.

7 MR. SIMON: Thank you very much, Your Honor. We  
8 appreciate it. Again, Dan Simon, McDermott Will & Emery, on  
9 behalf of the debtors as proposed counsel.

10 I'll do introductions in a moment, but I wanted to  
11 first express some appreciation. Thank your staff and  
12 courtroom deputy. We were obviously in touch with them  
13 throughout the day yesterday for accommodating us on an  
14 emergency basis. I've never been to Newnan, so this was good.  
15 I don't venture outside of the perimeter much.

16 But they have been extremely responsive, as well as  
17 the clerk's office, we were in touch with them last week  
18 regarding filing and the logistics of the filing, which, as  
19 you know, was quite an undertaking with 282 petitions. We had  
20 our team of paralegals working into the night, and we had been  
21 in very close contact with the clerk's office, so we're very  
22 thankful for them.

23 We've also been in contact with the Office of the  
24 United States Trustee last week. And again, we visited with  
25 them this morning, and we're very hopeful that that will help



Colloquy

1 streamline things at today's hearing.

2 And of course, thank you, Your Honor, for hearing us  
3 on an emergency basis. In spite of the issues downtown, we  
4 were happy to make the trek, and we were happy to bring  
5 everyone who wanted to be in person to be in person. So we  
6 appreciate that very much.

7 THE COURT: It's our pleasure.

8 MR. SIMON: With that, I'll make a few brief  
9 introductions. Introduce you to some of the parties here.  
10 First at counsel table from McDermott Will & Emery Ms. Emily  
11 Keil and Mr. Jack Haake. They will be presenting today, and  
12 we appreciate you entering their pro hac applications prior to  
13 this.

14 THE COURT: And welcome.

15 MS. KEIL: Thank you, Your Honor.

16 MR. SIMON: And I also want to introduce the members  
17 of the Ankura Consulting team, Mr. Russell Perry and Mr. Rohid  
18 Ahmed, as well as the debtors' chief restructuring officer Mr.  
19 Benjamin Jones, who, as you know, submitted a declaration the  
20 first day.

21 THE COURT: Excellent. Glad you could join us today.

22 MR. SIMON: In addition, Mr. Mike Krakovsky from  
23 Stout Capital, he is the debtors' proposed investment banker.  
24 And Mr. Krakovsky also submitted a declaration in advance of  
25 this hearing with respect to the DIP, which we'll cover later.



Colloquy

1           There's one other person who, unfortunately, could  
2 not be here today and could not be on Zoom. That is the  
3 debtors' independent manager, Mr. Jim Decker. Mr. Jim Decker  
4 happened to have a European vacation planned. And he probably  
5 wishes he was in Newnan, but he's in Europe instead.

6           With those introductions out of the way, I'll just  
7 lay out how we would like to proceed. Obviously, we defer to  
8 Your Honor's views. What I'd like to do is lay out a bit of  
9 history, how we got here, as well as basic facts about the  
10 debtors and information about their operating and history,  
11 capital structure, and the like. At that point, I'll turn it  
12 over to Ms. Keil and Mr. Haake to walk you through the agenda  
13 and the first day motions. And I'll come back at the end, and  
14 we can work through the DIP financing, which is at the end of  
15 the agenda. And if there is any housekeeping, we can address  
16 that at that point. Would that be okay with Your Honor?

17           THE COURT: That sounds like a fine way to proceed.

18           MR. SIMON: Great. At this time, I want to highlight  
19 again that we filed two declarations to serve as the  
20 administrative support for today's hearing. Mr. Benjamin  
21 Jones filed the traditional first day declaration in support  
22 of all of the matters on the agenda. We'll deal with Mr.  
23 Krakovsky's when we come to the DIP. But at this time, we  
24 would propose to enter into evidence Mr. Jones' declaration,  
25 which is at docket number 17. He's in the courtroom, and



Colloquy

1 obviously, to the extent anyone wishes to cross-examine Mr.  
2 Jones, he is available for that during the course of the  
3 hearing.

4 THE COURT: All right. Any objection to the  
5 introduction of Mr. Jones' declaration?

6 All right. With that, it's admitted.

7 (Declaration of Mr. Jones was hereby received into  
8 evidence as Debtors' Exhibit --, as of this date.)

9 MR. SIMON: Thank you, Your Honor. So with that, I'm  
10 just going to just start talking about a little bit of the  
11 history. Obviously, we filed quite a bit of paper late Sunday  
12 into Monday. There's a lot of detail in Mr. Jones' first day  
13 declaration.

14 But before we get to the capital structure for those  
15 issues, I want to talk about the human factor because the  
16 reality is the debtors operate forty-three skilled nursing  
17 facilities, which means that there are approximately 3,600  
18 residents who live in these homes who rely on the debtors in  
19 their daily lives for their food, for their medication, for  
20 their health care, and for their livelihood. And any  
21 interruption in services or the debtor -- or the debtors'  
22 ability to continue operating, it would undoubtedly have an  
23 economic consequence, but it also would have a human  
24 consequence. And obviously, we're here on an emergency basis  
25 to address these issues to avoid any impact to resident care.



Colloquy

1           Similarly, the debtors have 3,700 employees caring  
2           for those residents. They depend on the company for the  
3           wages, for their employee benefits, and those individuals in  
4           turn take care of the residents. They're the lifeblood of our  
5           business. Obviously, a very critical motion today is the  
6           employee wage motion.

7           In addition, related to the employees, if you read  
8           our first day declaration, you can see that employee issues  
9           have really been at the heart of some of the financial issues.  
10          And so it's critical that we take care of our employees so  
11          that our employees can take care of our residents. And again,  
12          we're out here on an emergency basis to make sure to provide  
13          that comfort to those employees.

14          So by way of background, and we discussed this in Mr.  
15          Jones' declaration, the company was previously one of the  
16          largest skilled nursing operators in the country, and it was  
17          the largest skilled nursing operator in the State of Florida,  
18          at one time operating more than seventy-five facilities in  
19          that state alone. But over time, and for the reasons outlined  
20          in the declaration, the portfolio has shrunk. It's shrunk not  
21          out of desire to shrink, but it's shrunk out of need, the need  
22          to survive, because in skilled nursing, it's an industry with  
23          very low, very thin operating margins, even in the best of  
24          times. And the reality is, this is not the best of times for  
25          the industry.





Colloquy

1 In the past several months alone, there have been a  
2 number of skilled nursing operators who have filed bankruptcy,  
3 and many more are teetering. And the underlying economic  
4 factors are outlined in that declaration, as well as the  
5 declarations in the other cases that talk a lot about the  
6 troubles facing the industry. But the reality is those  
7 issues, particularly around staffing, were felt more acutely  
8 in the State of Florida than in any other state. And Mr.  
9 Jones spent a significant time in that declaration discussing  
10 the impact of employee retention, of staffing agencies and the  
11 reliance on staffing agencies, as well as mandatory staffing  
12 laws, including one that's now proposed to be implemented on  
13 the federal level.

14 And obviously, given the company's concentration in  
15 Florida previously, it has been a huge driver in the debtors  
16 finding themselves where we are today. There is a lot of  
17 statistics and financial information in that declaration, but  
18 to me, one of the most impactful one is in paragraph 64, which  
19 states that in the years prior to the pandemic, the company  
20 spent about twenty-four million dollars annually on an average  
21 basis on staffing agencies. In the years after, they spent  
22 more than ninety million on average, almost a four-times  
23 increase.

24 So in addressing those issues, the management team  
25 took a number of steps. But the reality is that it wasn't



Colloquy

1 enough money to take care of everyone. So the company did  
2 what any good steward would do, which is they took care of  
3 their residents. They tried to make sure that the food was  
4 still coming, the medication was still coming, and the payroll  
5 was paid. But what that meant was that ultimately, we  
6 couldn't pay rent. And so the landlords were patient with  
7 that. They understood the struggles in the industry. But  
8 that strategy only works for so long. Landlords not one job,  
9 and that is to collect rent every month.

10 And so when we couldn't pay, the landlord searched  
11 for solutions and so did the company because we're just a  
12 tenant on their property. Right. If the landlord terminates  
13 a lease, the debtors don't have an ability to continue to  
14 operate. And again, many of those landlords were patient.  
15 The largest landlord is Omega. We talk about Omega. Omega is  
16 represented here today.

17 They have been patient. They have been constructive.  
18 And they've been collaborating with us. And they're here  
19 today to support us and assist us with the solution. But  
20 they've been working with us for months and months prior to  
21 the petition date because they need resolution on these issues  
22 too.

23 So Mr. Jones' declaration goes through, in fairly  
24 significant detail, the way that we've gone from 114  
25 facilities as of about a year ago to about 43 facilities.



Colloquy

1 Those 43 are core, well-operating, positive-cash-flow  
2 facilities. And so in going from that core portfolio, the  
3 facility transition of what we call the DivestCo, was actually  
4 value accretive to the debtors because we were able to limit  
5 and stop the cash burn. We referenced the cash burn in  
6 Florida alone over 2022 and 2023 was 133 million dollars.

7 And so while the divestitures of the facilities help  
8 turn the debtors from cash-flow negative to cash-flow  
9 positive, what they didn't address are the legacy liabilities  
10 that had accumulated there. And while that portfolio, the  
11 forty-three that operate today, generate positive cash flow,  
12 that positive cash flow is not nearly enough to service the  
13 liabilities that are there.

14 THE COURT: Let me ask you, if you could --

15 MR. SIMON: Yes.

16 THE COURT: -- just one quick question about that.

17 MR. SIMON: Sure.

18 THE COURT: I read some about the divestitures, and I  
19 am pretty sure I read that the debtors essentially didn't get  
20 anything for the divestitures. Basically, they were just  
21 handing the facilities over, not to someone else who I guess  
22 theoretically would run them better. Were they divested in  
23 large numbers or one to this person and one to that person, or  
24 can you give me a little more information on how you went from  
25 140 to 43 so --



Colloquy

1 MR. SIMON: I don't have the number of new operators,  
2 but there were a number of them. It wasn't going to one or  
3 two. And they were -- when there's a divestiture, what  
4 happens is the parties enter into what's called an operations  
5 transfer agreement. And that allows for basically a smooth  
6 transition to a new operator. There's no actual transaction  
7 unless the landlord sells the building in connection with  
8 them. And to the extent -- I don't know if the debtors' chief  
9 restructuring officer has anything to add or -- but I don't  
10 know if that answers your question.

11 THE COURT: It does. I was --

12 MR. SIMON: Um-hum.

13 THE COURT: -- just trying to figure whether we sold  
14 a bunch of these to one person, or it seems like it was sold a  
15 few at a time to --

16 MR. SIMON: On a break, we could probably figure out  
17 the number of new operators in connection with that.

18 THE COURT: Okay. And as I understand it, because I  
19 think some of them were relatively recently, such that  
20 receivables are still being collected from the old ones that  
21 are being paid to the ABL lenders --

22 MR. SIMON: Correct.

23 THE COURT: -- is that how that works?

24 MR. SIMON: It takes time for kind of the Medicare,  
25 the tie-in issues, the regulatory turnover. So some of that



Colloquy

1 money is flowing into the debtors. Previously, and we get  
2 this either in cash management or the DIP, but previously,  
3 that money would come in to the debtors, it would be swept up  
4 to MidCap, and then we would reborrow it and then transfer it  
5 back to the new operators.

6 Under kind of the post-petition construct, to the  
7 extent money is due to the new operators, we would effectively  
8 act as an intermediary. Collect those funds. They're all  
9 reconciled to make sure they're new operator cash. And then  
10 they go out to the new operator.

11 THE COURT: Right, and for the stuff that's owed to  
12 the debtors, that's being swept up as adequate protection to  
13 the ABL lenders, right?

14 MR. SIMON: Correct. To the extent it is pre-  
15 transfer, the transfer date, meaning the date of the facility  
16 transfer, that pre-transfer money did not go to the new  
17 operator. It goes to the debtors. And in this case, that  
18 would go to pay down the MidCap ABL line. That's correct.

19 THE COURT: Okay.

20 MR. SIMON: I just want to clarify a few points and  
21 maybe help simplify things a little bit. There's an entity  
22 chart attached. Normally, in a first day declaration, we  
23 attached a one-page entity chart. This is one was, I believe,  
24 eight pages.

25 But the reality is we have dotted lines around the



Colloquy

1 divested or the nonoperational facilities, and there are many.  
2 So when you look at that, it's really more than 200  
3 nonoperational entities. And I think that helps simplify  
4 things. Those are no longer operating nursing facilities  
5 recurring on business. But obviously, they do have the  
6 significant legacy liabilities left behind.

7           The second thing that I want to make clear, when we  
8 check a petition box, we refer to -- the petition box on  
9 assets and liabilities, we refer to the company's balance  
10 sheet. The company's balance sheet has a significant amount  
11 of assets and liabilities associated with the capitalized  
12 lease obligations. I believe the number is north of 600  
13 million dollars. But those assets and liabilities effectively  
14 balance each other out. There's no way to separate the assets  
15 and liabilities.

16           So I just wanted to make clear, and Mr. Jones helped  
17 me a little bit get there, that it's not as though we have a  
18 real asset there to sell because it would come with the  
19 liability as well. The true assets of these debtors is cash  
20 and accounts receivable and then whatever incremental value  
21 there is in the value of the operating lease as well. But the  
22 capitalized lease number, which is a very large number on both  
23 the asset and liability side, is not something that the  
24 debtors have the ability to go and monetize.

25           THE COURT: All right.



Colloquy

1 MR. SIMON: And I'm going to turn to Mr. Jones. Make  
2 sure I got that right.

3 MR. JONES: You did.

4 MR. SIMON: Okay.

5 THE COURT: Very good.

6 MR. SIMON: The only other point I want to make about  
7 pre-petition, kind of how, what brings us here today, is that  
8 the company tried very hard to avoid being here today. The  
9 management team took steps at every step of the way to try to  
10 address the issues with respect to COVID, to address its  
11 reliance on staffing agencies. And when they couldn't do it  
12 enough and liquidity was drying up, they sat down. They  
13 negotiated. They negotiated with their landlords. They sat  
14 down with their creditors, their litigation claimants.

15 And our view was if we could get a critical mass to  
16 agree to this kind of payment terms and payments over time, we  
17 can make this work until the industry rebounded. We had a  
18 number of those conversations with creditors. I had a number  
19 of those conversations with creditors. And our goal was to  
20 get it done out of court.

21 In order to help, there were equity contributions  
22 that came in. There was additional employee retention credits  
23 that came in. It never went back out. It never went up. All  
24 that money went in to support the business. And it was a one-  
25 way street.



Colloquy

1           And I want to be clear, this is not a situation where  
2 money -- where the investors fleeced the company. It was the  
3 opposite. Money came in to help support and stabilize the  
4 business. And it never went back up and out. It was there to  
5 pay creditors, to deal with the staffing issues. It was just  
6 never enough and we ran out of money and we ran out of time.  
7 And we're here to get solutions to the issues that face the  
8 key stakeholders, many of them -- many of which are in the  
9 room.

10           And so what I'd like to do, I'll pause there. That's  
11 kind of how we got here. And then I would like to take just a  
12 few minutes to talk about where we intend to go.

13           THE COURT: Okay. Your declaration also mentioned it  
14 seemed like recently filed lawsuit that aggregated a number of  
15 claims. Can you tell me anything about that?

16           MR. SIMON: I can. In this industry, there's a fair  
17 number of what we refer to as PLGL litigation, which relates  
18 to effectively tort allegations. Most of those, if not all of  
19 them, get settled over the course of time. And that's kind of  
20 the standard in the industry to avoid a potential runaway  
21 jury, which has happened in states like Florida. And so the  
22 company has a team that goes through and works the claims and  
23 ultimately settles the claims. Oftentimes, those claims are  
24 paid out over time.

25           And as the liquidity dried up, the ability to support





Colloquy

1 the settlement payments was not there. And so what happened  
2 was a group of -- a group of those plaintiffs' lawyers got  
3 together, they formed a new entity, and they filed a suit.  
4 And as you can see from the first day declaration and some of  
5 the allegations, they're estate causes of action in reality.  
6 Right.

7 We disagree strongly with them. The complaint is not  
8 clear about kind of the allegations. But the reality is it  
9 shifted the narrative a bit for this company to realize we  
10 were looking at other options, whether it was addressing the  
11 issues with all the creditors and bringing in an equity  
12 infusion, figuring out a way to do an out-of-court  
13 transaction, and that lawsuit, it kind of brought the  
14 recognition that at the end of the day, we're going to need a  
15 process to bring everyone together, as opposed to kind of one-  
16 off litigation in various forums.

17 THE COURT: Okay. Thank you.

18 MR. SIMON: Um-hum. So fast-forward to today. The  
19 debtors have three goals in this process. First goal, which  
20 starts today, is maintain stability.

21 We have a well-performing, stabilized group of  
22 facilities. Obviously, the filing of Chapter 11 has the  
23 potential at times to disrupt that stability. We want to  
24 maintain stability. That's goal number one. Goal number two  
25 is a market process led by the Mr. Krakovsky's team at Stout



Colloquy

1 to go out and see and try and monetize the assets. And that  
2 leads to the third goal, which is an exit, either through a  
3 363 sale or through a plan of reorganization. So I'll cover  
4 those briefly.

5 First, stabilization. Again, the debtors have broad-  
6 based support for what we're looking for today. The DIP  
7 financing is critical to continue to making payroll, to  
8 address the critical vendors -- I use that term lowercase  
9 critical vendors in our facilities who deliver food, who bring  
10 the medication. And the company needs to focus on what it  
11 does outside of bankruptcy, which is resident care, focus on  
12 business, focus on the operations. That's the core of what  
13 they do.

14 The second, marketing. Again, the debtors have  
15 retained Stout Capital as their proposed investment banker.  
16 We have lease portfolios that generate positive cash flow and  
17 will be working to go out to market on a potential sale or a  
18 potential plan where those assets can exit free and clear of  
19 the existing liabilities. And obviously, Stout is well-placed  
20 to run those efforts.

21 And then the third and final goal is to effectuate an  
22 exit. And that is either through a 363 sale or a Chapter 11  
23 plan. And the key thing is it will be market-tested.

24 I want to make one final point from Mr. Jones'  
25 declaration, which is at the very end. I believe it's



Colloquy

1 paragraph 81, but I don't have that in front of me. But it  
2 says operating skilled nursing facilities inside of Chapter 11  
3 for an extended period comes with its own inherent  
4 difficulties.

5 And he's right. There is potential value degradation  
6 the longer we stay in the process. Employees don't have  
7 certainty as to where the company is going. And residents and  
8 their family may choose to go elsewhere. So we want to be  
9 efficient. And we recognize that companies generally don't  
10 linger well in Chapter 11.

11 We want to balance that, of course, though, with the  
12 recognition that there will be a creditors committee. The  
13 creditors committee will have to get up to speed and evaluate  
14 our proposed path. And we very much welcome a constructive  
15 dialog with them on that.

16 So those are our goals, maintain the stability,  
17 address the marketing through market test, and then  
18 consummating an exit through a sale or a plan. That  
19 stability, that starts today, and it starts with the agenda we  
20 laid out for you. And with that, I'm happy to answer any  
21 questions, or else I'll turn it over to some of my colleagues.

22 THE COURT: Okay. I'm maybe interested and intrigued  
23 by your suggestion that the case may result in a plan. I've  
24 looked at the -- looking at the milestones in the post-  
25 petition financing, it seems like the present plan is a sale



Colloquy

1 in the next 120 days or so. Did I misapprehend that?

2 MR. SIMON: There are milestone -- there are kind of  
3 parallel-track milestones under the DIP. One is a plan  
4 process, and there is a milestone in there to file a plan in  
5 the next forty-five days. And then there's kind of milestones  
6 associated with a --

7 THE COURT: Okay.

8 MR. SIMON: -- sale. And they kind of both converge  
9 at the end, depending up on kind of where bids come out and  
10 kind of who wants to participate in that process. So we're  
11 kind of going a dual track here.

12 THE COURT: But we're looking at more or less the  
13 same time frame --

14 MR. SIMON: That's the goal.

15 THE COURT: -- either way? Okay.

16 MR. SIMON: That's the goal.

17 THE COURT: All right. That's the only other  
18 question I had so --

19 MR. SIMON: Great. With that, Your Honor, I'm going  
20 to hand it over to Ms. Keil, who will start walking you  
21 through the agenda.

22 THE COURT: All right.

23 MR. SIMON: Thank you.

24 MR. ADAMS: And Your Honor, I don't want to take up  
25 too much time. I just want to give you a brief overview of



Colloquy

1 what we're doing and how we're trying to get the case going.

2 As you can imagine, 282 cases --

3 THE COURT: You want to make your appearance first?

4 MR. ADAMS: I will. Jonathan Adams on behalf of  
5 United States Trustee.

6 THE COURT: Very good.

7 MR. ADAMS: Lindsay Kolba is also here with our  
8 office. And Your Honor, I apologize. I know you know me, and  
9 we just kind of got carried away with our notes. And I  
10 apologize about that.

11 THE COURT: That's all right.

12 MR. ADAMS: Again, just want to give you a brief  
13 overview of what we're doing and where we're going so the  
14 Court's --

15 THE COURT: Sure.

16 MR. ADAMS: -- aware. Your Honor, we are working  
17 diligently on getting the meeting of creditors situated so  
18 that we can get the notice of commencement out. We believe  
19 that meeting of creditors, the initial one will be about July  
20 2nd and 3rd. We're going to try to triage the cases into  
21 about seven or eight categories and hold the categories of  
22 meetings during that time so we don't have 282 meetings. We  
23 have category meetings.

24 As Your Honor knows, there's a motion before the  
25 Court to extend the time to file schedules. As a result, it



Colloquy

1 will probably, well, almost certainly be necessary for us to  
2 continue that meeting of creditors past that deadline so that  
3 we can see those and asking any appropriate questions, as can  
4 the creditors.

5 THE COURT: Is there a date scheduled? I looked on  
6 the docket. I didn't see one.

7 MR. ADAMS: It has not yet been issued.

8 THE COURT: Okay.

9 MR. ADAMS: Again, we are tentatively looking at the  
10 July 2nd and 3rd.

11 THE COURT: Oh, okay.

12 MR. ADAMS: And we're looking to finalize that in the  
13 next day or so. We'll --

14 THE COURT: Okay.

15 MR. ADAMS: -- have that out. Your Honor, just so  
16 you know, the initial debtor interviews, we're hoping to hold  
17 those the week of June 17th. Of course, there's a holiday  
18 that week on a Wednesday. So we're trying to be going around  
19 that, but that's kind of what we're looking for as far as  
20 initial debtor interview.

21 We hope to get the credit committee solicitations out  
22 by the end of the day tomorrow. Hope to solicit that quickly.  
23 As Your Honor has already pointed out, there's a very quick  
24 timeline for things to get done in this case. We believe  
25 there'll be a creditor committee. We've had some interest



Colloquy

1 expressed to us by other parties already. And so we want to  
2 get them up to speed as quickly as we can.

3 Your Honor, this will be a large fee case. Just want  
4 everybody to know that. So our guidelines that would apply to  
5 that will be here in this case.

6 And herein, of course, finally, Your Honor, this is a  
7 case that will require patient care ombudsmans, probably more  
8 than one. I think we're in five different states with these  
9 facilities. Still working with the debtors' counsel to get  
10 some suggestions on that. But we will be working on that in  
11 the next few days and will be trying to get those in place  
12 this year.

13 Does Your Honor have any questions for me?

14 THE COURT: No. No. That was one of the items on my  
15 checklist was to touch on about the patient care ombudsman.  
16 It sounds like you're ahead of me there, which is no surprise.

17 MR. ADAMS: Thank you, Your Honor.

18 MS. KEIL: Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 MS. KEIL: For the record, Emily Keil of McDermott  
21 Will & Emory on behalf of the debtors. If it pleases the  
22 Court, I'm going to walk through items 2 through 7 on the  
23 agenda today.

24 THE COURT: All right.

25 MS. KEIL: And address a couple of administrative



Colloquy

1 points in advance of that if that works for you.

2 THE COURT: Go right ahead.

3 MS. KEIL: Thank you, Your Honor. As an initial  
4 matter, I would like to thank the Court and your chambers  
5 staff for entering the order authorizing joint administration  
6 on the Chapter 11 cases. I believe that's been entered now in  
7 each and every of the 282 cases, and as the person who was  
8 involved with filing the petitions, I can certainly appreciate  
9 the amount of time and effort that goes into that. So we  
10 certainly appreciate the efforts there.

11 Just as a housekeeping matter, in terms of uploading  
12 orders, obviously subject to any changes requested by Your  
13 Honor, is it the preference to just submit an order via ECF,  
14 upload that after the hearing, or via Word to chambers itself?  
15 Do you have a preference?

16 THE COURT: Yeah, you just upload it --

17 MS. KEIL: Okay.

18 THE COURT: -- through ECF is fine.

19 MS. KEIL: Perfect. Thank you.

20 THE COURT: If we have any questions or we can  
21 communicate and --

22 MS. KEIL: Absolutely.

23 THE COURT: -- work that out.

24 MS. KEIL: Understood. Thank you, Your Honor. So  
25 the first time I will address is item number 2 on the agenda,





Colloquy

1 which is the debtors' consolidated creditor matrix motion  
2 filed at document number 4. By this motion, the debtor  
3 request variety release that I'll walk through in turn.

4 First, the debtors seek authority to file a  
5 consolidated list of creditors in lieu of submitting and  
6 maintaining individual creditor matrices across all of the 282  
7 debtors. Requiring the debtors to convert their records into  
8 a debtor-specific matrix format would be unnecessarily  
9 redundant in the debtors' view and complex, given the  
10 overlapping nature of many of the creditor relationships.

11 Similarly, the debtors also seek authority to file a  
12 consolidated list of their top-thirty creditors, as required  
13 by Section C-1 of the complex case procedures given the  
14 administration of the cases. The debtors believe that  
15 compiling a list of the top-twenty creditors for each of the  
16 282 debtors would unnecessarily expend substantial time and  
17 resources.

18 Additionally, the debtors seek authority to redact  
19 any personal identifiable information in the creditor matrix  
20 for individual creditors, such as home addresses, from certain  
21 bankruptcy documents, including the consolidated creditor  
22 matrix and any schedules and statements. While the debtors  
23 certainly recognize that transparency and disclosure is very  
24 important in the bankruptcy process, the debtors view that the  
25 concern for safety and avoiding risks of identity theft sort



Colloquy

1 of have to be considered, as well as transparency. So --

2 THE COURT: All right.

3 MS. KEIL: -- we submit that the redaction of home  
4 addresses for individual creditors is merited, given those  
5 security and privacy concerns.

6 THE COURT: And I take it we'll be able to serve  
7 those people, nevertheless.

8 MS. KEIL: Yes, absolutely. It will just not be  
9 included in the publicly available creditor matrix. But those  
10 creditors will still be served with all the all-creditor  
11 mailings, including the notice of commencement. Things like  
12 that.

13 THE COURT: Very good.

14 MS. KEIL: Same with schedules and statements, the  
15 addresses will be redacted from there as well. Again, just a  
16 pure security concern for the individual creditors. The  
17 debtor will, of course, provide unredacted version to the U.S.  
18 Trustee, the Court, and any other party-in-interest who  
19 requests one, including any committee appointed in the cases.

20 The debtors also seek authority through that  
21 motion -- seek approval of the form and manner of the notice  
22 of commencement attached to the order as Exhibit 1. The  
23 debtors intend to serve the notice of commencement on all  
24 known creditors, with one specific nuance that I'd like to  
25 address that is a change from the order that we submitted.



Colloquy

1 And Your Honor, to that point, I do have a redline of the  
2 order. If you'd like to see it, I'm happy to -- if I'm  
3 allowed to approach, would --

4 THE COURT: Sure.

5 MS. KEIL: -- like to see it? Thank you. Thank you  
6 so much.

7 As has been already discussed today, obviously the  
8 debtors operate skilled nursing and independent living  
9 facilities with thousands of predominately elderly residents.  
10 We originally had proposed serving those current residents by  
11 posting the notice of commencement in public areas of the  
12 facilities, as well as by publication. However, upon further  
13 reflection and discussion with the U.S. Trustee this morning,  
14 we have agreed to provide written notice as well with a letter  
15 from the facility sort of as a cover letter to try and avoid  
16 the confusion and consternation that can result, in our  
17 experience, from sending out the standard 309 notice of  
18 commencement form to elderly residents. And we typically will  
19 get calls that are very concerned that they have personally  
20 been filed for bankruptcy or things like that. So we were  
21 simply trying to avoid that confusion and consternation on  
22 behalf of the residents.

23 So as you'll see in -- let's see -- apologies, one  
24 moment, please -- paragraph 7 of the order has been modified  
25 to reflect that the debtors shall serve the notice of



Colloquy

1 commencement on their current residents in a variety of ways,  
2 one, by posting a notice of commencement in the common areas  
3 of their facilities, two, distributing a letter from the  
4 facility apprising them of the commencement of the Chapter 11  
5 cases. After discussion with the U.S. Trustee, I believe  
6 we'll need to modify that to reflect that the notice of  
7 commencement itself will also be included with that letter.

8 In other words, it'll be a cover letter and then also  
9 be form notice that you, Your Honor, subject to your approval  
10 today, will be approved and this order will also be included  
11 there. And then we also included that we can notify them by  
12 publication in either a national or local publication,  
13 recognizing that the national publications that we had  
14 previously noted in this order may not be as widely circulated  
15 to the residents of the facilities and in more local areas.

16 I will obviously defer to Mr. Adams, but I believe  
17 that, with those changes, that resolves that particular issue  
18 in this particular order.

19 THE COURT: Okay. So I'm looking at your redline.

20 MS. KEIL: Yep.

21 THE COURT: And I'm sure you'll get to this next  
22 because this also deals with monthly operating reports.

23 MS. KEIL: Yes.

24 THE COURT: But you deleted all the language about  
25 consolidated monthly operating report so --



Colloquy

1 MS. KEIL: Sure. Yes, we have, in discussions with  
2 the U.S. Trustee, agreed to essentially kick that to the final  
3 hearing.

4 THE COURT: Okay.

5 MS. KEIL: That's why, on the first page of this  
6 order, it's now an interim order. As Your Honor notes, the  
7 motion originally sought authority for the debtors to file  
8 essentially one consolidated monthly operating report for all  
9 220 debtors but in just the lead case. The debtors remain  
10 concerned about burning administrative expenses unnecessarily.  
11 And we're purely focused on efficiency by doing so. We are  
12 happy to kick that topic to the final hearing, which is why  
13 it's been removed from the interim order.

14 THE COURT: Okay.

15 MS. KEIL: And we'll continue with the U.S. Trustee  
16 for sure in the coming weeks in advance of that.

17 I think that covers everything that's requested in  
18 this motion. So unless Your Honor has any other questions, we  
19 would respectfully request entry of that order on an interim  
20 basis.

21 THE COURT: Okay. So I guess the first thing I'll  
22 note about that is that if we're going to have a final  
23 hearing, then this should probably a paragraph that says the  
24 final hearing on this motion will be --

25 MS. KEIL: Yep. Absolutely. We'll add that in. Um-



Colloquy

1 hum.

2 THE COURT: -- whenever it's going to be.

3 MS. KEIL: Yep, absolutely. We'll add that.

4 THE COURT: Okay. And I have, believe it or not,  
5 some comments from the clerk's office --

6 MS. KEIL: Sure.

7 THE COURT: -- and a couple from me on the actual  
8 form you're going to send out.

9 MS. KEIL: Okay.

10 THE COURT: But I'll hear from the, I guess, U.S.  
11 Trustee first. Make sure that it's all okay.

12 MS. KOLBA: Thank you, Your Honor. Lindsay Kolba on  
13 behalf of the United States Trustee.

14 Debtors' counsel is correct. We've had an  
15 opportunity to speak about a number of these issues, and the  
16 proposed form of order has been discussed. We did request  
17 that a copy of the official notice accompany any cover letters  
18 that go out to the known creditors and all the residents, just  
19 because we do believe that under the Rules and even the  
20 court's complex case procedures, the expectation is that all  
21 parties will be served with the actual notice of commencement  
22 of the case.

23 I am well aware of the issues that when people  
24 receive that form, there are concerns and there are a lot of  
25 phone calls and there are a large number of people. And we



Colloquy

1 are obviously sensitive to the concerns of debtors' counsel  
2 have to have a staff member essentially dedicated to  
3 responding to questions. So hopefully a cover letter will  
4 alleviate some of those issues. And obviously, if we're able  
5 to get the committee appointed, that may alleviate some of  
6 those issues on debtors' counsel's part.

7 With respect to the monthly operating reports, there  
8 are just some logistical issues on our side. As the Court  
9 knows, the United States Trustee program has rather recently  
10 adopted data-enabled forms. And so we are going to try and  
11 work through some of the logistical issues on our side in  
12 terms of making sure that we're able to efficiently account  
13 for all the disbursements that are being made on behalf of  
14 operating entities, and as well as be sensitive to the  
15 debtors' concerns of not having to upload 282 individual  
16 documents.

17 THE COURT: Right.

18 MS. KOLBA: It's just going to be an ongoing  
19 conversation. As the Court is well aware, even with our  
20 complex cases, the large number of these filings is outside  
21 the norm, even for a complex case in Atlanta. So we are just  
22 going to have to work through, like I said, some of those  
23 logistical issues on our side. It's going to be a continuing  
24 conversation. And the United States Trustee is very hopeful  
25 that we will be able to reach a resolution with respect to the



Colloquy

1 monthly operating reports that is workable both for the  
2 debtors and for the United States Trustee's office in terms of  
3 the administrative lift that will be required to keep track of  
4 everything.

5 So again, that will just be an ongoing conversation.  
6 To the extent we're not able to reach a resolution, obviously,  
7 we would come back to the court and discuss those issues with  
8 Your Honor. But we do remain hopeful that we can come up with  
9 something on our own.

10 THE COURT: Okay. All right. I'm sure, between the  
11 reasonable parties in front of me, you'll be able to work  
12 something out before we get to a final hearing. I certainly  
13 am sympathetic to the notion, one, nobody wants to file 282  
14 monthly operating reports if they don't have to. And if you  
15 have over 200 of the entities that aren't actually doing  
16 anything, there's no point in any of those entities, really,  
17 filing anything. But I'll leave the details of all of that to  
18 all of you.

19 MS. KOLBA: Thank you, Your Honor.

20 THE COURT: Did you have any comments about the  
21 actual form of the notice?

22 MS. KOLBA: The form of the notice appeared to be the  
23 official form. It deviates slightly in that obviously it's  
24 going to provide contact information for the claims  
25 administrator --





Colloquy

1 THE COURT: Right.

2 MS. KOLBA: -- assuming the Court approves the  
3 employment of KCC today. I believe that that is typical when  
4 you have a noticing agent in a case like this. It does  
5 provide contact information and obviously the relevant  
6 information regarding -- will include the information  
7 regarding the meeting of creditors once we're able to provide  
8 that to debtors' counsel.

9 THE COURT: Okay. So I got a comment from the  
10 clerk's office, which was just that their phone number was not  
11 right and their address was incomplete and it didn't include  
12 their website address.

13 MS. KEIL: All right.

14 THE COURT: So I have a -- I have something I could  
15 send you --

16 MS. KEIL: Sure.

17 THE COURT: -- which has their correction on that.

18 I noted a couple of things myself, which is just,  
19 first, it refers to the debtors listed above in the bold parts  
20 that says, each of the above-listed debtors have been filed a  
21 Chapter 11 case, and there isn't a list of anything.

22 MS. KEIL: Sure. We can modify that language. Our  
23 goal is to post a list of the debtors on the KCC's website.

24 THE COURT: Right. It's not that a list has to go  
25 with or anything.



Colloquy

1 MS. KEIL: Okay.

2 THE COURT: It's just that it should be clear that  
3 there's a list somewhere that they can go find.

4 MS. KEIL: Got it. Yes, understood.

5 THE COURT: I also note, since I signed all these  
6 orders yesterday, that you don't have to say that any of you  
7 have pro hac pending anymore because --

8 MS. KEIL: Yep. That's been fixed on our end. Yep.

9 THE COURT: That's good. The meeting of creditors, I  
10 think, it's not telephonic, is it?

11 MS. KEIL: Your Honor, apologies. We weren't sure if  
12 it was going to be telephonic or not, but certainly defer to  
13 the U.S. Trustee.

14 MR. ADAMS: Your Honor, Jonathan Adams on behalf of  
15 the United States Trustee. Frankly, Your Honor, we're still  
16 working through that issue. We hope to have that worked out  
17 here by the end of the day today or tomorrow. But we're not  
18 certain as to what medium we will be handling the meeting of  
19 creditors.

20 THE COURT: Okay. Well, obviously, whatever that  
21 says about the meeting of creditors, it should --

22 MR. ADAMS: The accurate.

23 THE COURT: -- provide whatever the accurate  
24 information is about that. And that's all I have about that  
25 though.



Colloquy

1 So what's next?

2 MS. KEIL: All right. Thank you, Your Honor. Moving  
3 on to agenda item number 3 filed at docket number 5 is the  
4 debtors' application to retain Kurtzman Carson Associate --  
5 sorry. Kurtzman Carson Consultants, LLC as the claims and  
6 noticing agent in these Chapter 11 cases. Given the thousands  
7 of creditors involved here, the debtors believe the retention  
8 of a claims, noticing, and solicitation agent is appropriate,  
9 as well as encouraged by the complex case procedures and the  
10 Bankruptcy Code and the Bankruptcy Rules as well.

11 As this Court is likely aware, KCC is a leading  
12 Chapter 11 administrator with significant experience in  
13 noticing and claims administration, particularly in the health  
14 care space, and is HIPAA-compliant, which is important here,  
15 obviously, for obvious reasons. The debtors believe that KCC  
16 is well-qualified and uniquely suited to provide claims,  
17 noticing, solicitation, and administrative services to the  
18 debtors during these Chapter 11 cases.

19 In support of the application, the debtors have  
20 submitted the declaration of Evan Gershbein from KCC, who is  
21 available on the phone for cross-examination to the extent  
22 necessary. So if acceptable to Your Honor, we would seek to  
23 enter that declaration into evidence.

24 THE COURT: All right. Anybody oppose entering the  
25 declaration?



Colloquy

1 Hearing no opposition, it's admitted.

2 (Declaration of Mr. Gershbein was hereby received  
3 into evidence as Debtors' Exhibit --, as of this date.)

4 MS. KEIL: Thank you, Your Honor. As set forth in  
5 the declaration, KCC is not aware of any relationship that  
6 would prevent a disqualifying conflict of interest.

7 One item that we want to clarify after discussions  
8 with the U.S. Trustee this morning regarding KCC's pre-  
9 petition retainer or advance that was received in connection  
10 with their services agreement, KCC received a 50,000-dollar  
11 retainer that is not going to need to be replenished. So we  
12 have also made that change in the order. If Your Honor would  
13 like to see it, if I'm allowed, may I approach the bench?

14 THE COURT: You may.

15 MS. KEIL: And I'm happy to pass it up.

16 So Your Honor, if you look at paragraph number 12, we  
17 have struck the language that said -- it says, "KCC may apply  
18 its advance to all pre-petition invoices," and we've struck  
19 the language, "which retainer shall be replenished", to the  
20 original retainer amount of 50,000. KCC is still holding that  
21 advance, so it will not need to be replenished, hence striking  
22 of that language.

23 We also confirmed that in connection with pre-  
24 petition services, KCC received an additional 50,000 that  
25 covered all pre-petition work. So there is no outstanding



Colloquy

1 pre-petition amounts owed to KCC, meaning that they're not a  
2 creditor or anything like that. They will maintain the 50,000  
3 advance throughout the cases and will not need to be  
4 replenished in connection with their work here.

5 We've struck that language in the proposed order. We  
6 have also, in paragraph 13(b), at the request of the United  
7 States Trustee, KCC has agreed to strike the words "gross" and  
8 "willful" from the description of the actions in 13(b)  
9 Romanette (i). We will be adding back in "misconduct". That  
10 was my error, my miscommunication on my part. The U.S.  
11 Trustee's request is only removing the words "gross" and  
12 "willful".

13 THE COURT: All right.

14 MS. KEIL: "Misconduct" will go back in to the  
15 proposed order.

16 Unless Your Honor has any questions, the debtors  
17 respectfully request that the Court approve the application  
18 appointing KCC as the debtors' claims, noticing, solicitation,  
19 and administrative agent in these Chapter 11 cases.

20 THE COURT: Okay. Does anybody wish to be heard with  
21 regard to this motion?

22 MS. KOLBA: Your Honor, Lindsay Kolba on behalf of  
23 the United States Trustee. With respect to the pre-petition  
24 advance, the United States Trustee just wanted to get  
25 clarification that there were no pre-petition amounts due. So



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1 there is a -- it is my understanding, after conversations with  
2 counsel, that there was a pre-petition amount that was paid  
3 that was applied to the pre-petition services, and those  
4 invoices were all paid pre-petition. So there are no amounts  
5 presently due for pre-petition services.

6 And I know that Ms. Keil just said this, but again,  
7 just for clarity of the record, there will now remain 50,000  
8 dollars available for applications toward invoices for post-  
9 petition services. So again, we were just trying to get  
10 clarification of that particular point. And --

11 THE COURT: That's what I understood her to say too  
12 so --

13 MS. KOLBA: Yeah. And we would expect that we will  
14 have an opportunity to review the proposed order one more time  
15 before it is submitted to the Court. But we did review that  
16 prior to this afternoon's hearing, and I didn't see anything  
17 else that would need to be changed.

18 THE COURT: Okay. Very good. Does anybody else wish  
19 to be heard on this motion?

20 And I have noted to myself I didn't ask that question  
21 about the prior motion. Anybody have any other comments about  
22 the prior motion?

23 I didn't think so. I figured that was more of a two-  
24 person discussion, but I should definitely ask.

25 So hearing none, with the revisions proposed, I will



Colloquy

1 say, arguably this retention, and I think you cited it in your  
2 application is a retention under 2014, among other things,  
3 such the Rule 6003(a) arguably applies. And if that's the  
4 case, I would find that immediate and irreparable harm would  
5 result without the assistance of Kurtzman, who has done a  
6 fabulous job. Website was up yesterday. So with that, if  
7 you'll present an order, we'll approve their engagement.

8 MS. KEIL: Thank you, Your Honor. Yes, we will be  
9 sure to submit the revised order following sending the redline  
10 to the U.S. Trustee for sign-off.

11 THE COURT: Very good.

12 MS. KEIL: Thank you, Your Honor. The next item on  
13 the agenda is agenda item number 4, which is the debtors'  
14 motion seeking a thirty-day extension of their deadline to  
15 file schedules and statements in these cases. While the  
16 debtors, of course, appreciate and understand the fact that it  
17 is important for those to be on file for purposes of the 341  
18 meeting as was already previewed, the debtors submit that  
19 cause exists to grant a thirty-day extension here, pursuant to  
20 Rule 1007(c).

21 In the days leading up to the petition date, the  
22 debtors and their management did not have time to focus on  
23 preparing their schedules and statements because they were  
24 focused on getting to today. Given the fact there are 282  
25 debtors with forty-three operating facilities across five



Colloquy

1 states, books and records may be spread across various  
2 entities in physical locations. So the debtors submit that it  
3 will take longer than the fourteen days provided by, again,  
4 Rule 1007(c).

5 In the coming days, the debtors intend to pivot their  
6 focus in part to preparing these schedules in advance of the  
7 341 meeting. And again, when we spoke with them morning, the  
8 U.S. Trustee did not take issue with the thirty-day extension.  
9 I'll certainly let them weigh in as needed, but we believe  
10 they intend to schedule the substantive 341 meeting perhaps  
11 after such schedules have been filed, which I believe we've  
12 requested an extension through July 16th, without prejudice,  
13 of course, for the debtors to seek additional extensions. But  
14 we're going to make every effort to meet that deadline.

15 And so unless Your Honor has any questions, the  
16 debtors seek entry of that order as well, approving that  
17 extension.

18 THE COURT: All right. Anybody else wish to be heard  
19 with regard to this motion?

20 Hearing none, you have obviously a lot of debtors,  
21 lot of schedules to be filed. And I know, I'm sure there's a  
22 great rush in connection with filing cases. So thirty days  
23 seems reasonable in these circumstances. And so if you'll  
24 present an order, we'll grant the extension.

25 MS. KEIL: Thank you, Your Honor. The next item on





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1 the agenda is number 5, which is the debtors' motion to  
2 approve certain resident confidentiality procedures that was  
3 filed at docket number 7.

4 As has been said multiple times today, as operators  
5 of forty-three skilled nursing and independent living  
6 facilities, the debtors collect certain identifiable health  
7 care -- or health information in the ordinary course of  
8 business and are required pursuant to HIPPA and applicable  
9 health care laws, privacy data laws as well, to maintain the  
10 confidentiality of their residents' health information. So in  
11 order to ensure such compliance in these Chapter 11 cases,  
12 we've set forth the procedures that are in order in order to  
13 ensure that the confidential health information maintains just  
14 that, confidential, or is able to maintain confidentiality.

15 Among other things, the procedures lay out omitting  
16 references to resident names in the creditor matrix as well as  
17 schedules and statements. That list will be separately  
18 maintained by KCC, who, again, is fully HIPPA-compliant and  
19 has a great deal of experience, valuable experience in health  
20 care restructuring space. They'll maintain this list of  
21 residents separate and apart from the main creditor matrix.  
22 And of course, on request from any party-in-interest,  
23 certainly happy to share that within reason. It will not be  
24 publicly filed but again maintained by KCC.

25 Given their need to maintain HIPPA compliance, the



Colloquy

1 debtors submit that their relief requested is necessary among  
2 other things to prioritize and protect the resident health  
3 information. Unless Your Honor has any questions, the debtors  
4 respectfully request that the confidentiality motion be  
5 granted as well.

6 THE COURT: Okay. I take it the health care  
7 information we're talking about here is really just the fact  
8 that the residents are residents of such a facility?

9 MS. KEIL: Correct. Yep. Yes, it's not --

10 THE COURT: We're not talking about any of their  
11 other information?

12 MS. KEIL: Correct, Your Honor. We will not have  
13 access to any pertinent health data or anything like that.  
14 But it is the fact that they are residents --

15 THE COURT: Right.

16 MS. KEIL: -- and -- yeah.

17 THE COURT: Okay. Does anybody wish to be heard with  
18 regard to this particular motion?

19 All right. In that regard, I have taken a look at  
20 the issues related to this and familiar with them a little  
21 bit. I also reviewed a number of the orders helpfully cited  
22 in the pleadings from other cases. And the order you've  
23 submitted seems consistent with relief granted in other cases.  
24 So in the absence of opposition and in light of that, your  
25 motion will be granted if you'll present an order.



Colloquy

1 MS. KEIL: Thank you, Your Honor. The next item on  
2 the agenda is item number 6, which is the debtors' motion  
3 seeking authority to pay pre-petition refunds and third-party  
4 payor overpayments filed at docket number 8. This motion  
5 seeks a variety of relief, which again, I'll walk through in  
6 turn. With respect to their resident programs, their refund  
7 programs, the debtors bill residents as well as third-party  
8 payors for services that they provide to the residents in the  
9 ordinary course of business.

10 In certain instances, the debtors may receive excess  
11 funds on account of a particular bill with result in an  
12 overpayment. After identifying that overpayment, the debtors  
13 in the ordinary course will submit refunds to their residents  
14 or various third-party payors, either through a check  
15 remittance or through offsetting via a credit balance. This  
16 process is routine and is required in many instances by  
17 various federal and state laws. Given historic variability of  
18 their refunds, the debtors estimate that as of the petition  
19 date, as much as 1.8 million may be outstanding on account of  
20 their refund practices. In the interim, the debtors seek  
21 authority to pay 1.2 million of that, which will become due  
22 and payable in the first thirty days of the cases.

23 As operators of skilled nursing and independent  
24 living facilities, the debtors' relationships with their  
25 residents as well as third-party payors is extremely



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1 important, and it remains instrumental for their ability to  
2 continue to operate and care for their residents. Such  
3 payments that I've just described to residents to third-party  
4 payors will benefit all creditors and in many instances again  
5 are required. So again, this is on an interim basis. We're  
6 seeking to pay 1.2 million. And we also seek authority, of  
7 course, to continue honoring obligations in the ordinary  
8 course post-petition.

9           Next relief requested in this motion deals with the  
10 cost report settlements that the debtors are required to  
11 submit. In the ordinary course as a Medicare-certified  
12 provider, they are required to submit annual cost reports to  
13 Medicare that basically summarize facility characteristics,  
14 utilization data, various costs and charges, and other  
15 applicable financial information. These reports are not  
16 voluntary, importantly, and they are a requirement to  
17 participate in the Medicare program. They are typically due  
18 in May of every year. In fact, I believe that the company  
19 just submitted theirs last week in the end of May.

20           So to the extent amounts are owed for a cost report,  
21 such amounts are either submitted by the debtors on an annual  
22 basis to Medicare, or Medicare will effectively recoup out  
23 those amounts from go-forward payments. As of the petition  
24 date, the debtors estimate they approximately owe 2.4 million  
25 in amounts related to cost reports for 2023, which again are



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1 filed on an annual basis. And given the timing of this  
2 filing, they were submitted. They still remain outstanding.  
3 Of the 2.4 million, approximately 2.1 million are going to  
4 become due and owing in the next thirty days, again, given  
5 timing of the report due date and this filing. The debtors  
6 seek authority to pay those amounts to Medicare as and when  
7 necessary.

8 Another piece that we've requested here has to do the  
9 debtors' resident trust accounts. Each of the debtors'  
10 facilities maintains trust accounts on behalf of their  
11 respective residents for the residents' personal use.  
12 Importantly, Your Honor, and I think that this will be  
13 discussed by my colleague in connection with the cash  
14 management motion as well, but the resident trust accounts are  
15 maintained by the debtors, but the amounts in those accounts  
16 are not estate property. Those funds belong to the residents.  
17 The debtors just maintain those accounts for resident use.  
18 Residents can deposit funds in those accounts in a number of  
19 ways and use them for a variety of needs, including to pay for  
20 services, fund insurance premiums, or otherwise pay for  
21 discretionary expenses.

22 As of the petition date, the debtors estimate that  
23 they hold approximately 3.2 million dollars in resident  
24 accounts across their facilities, again, emphasizing that that  
25 money belongs to residents and not to the debtors. So it's



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1 not property of the estate. National Datacare helps  
2 administer those accounts. They are a third-party vendor that  
3 specializes in providing resident fund management services.

4 The debtors in the ordinary course paid National  
5 Datacare about 20,000 dollars per month to maintain those  
6 account and seek authority to pay National Datacare in the  
7 ordinary course for the pre-petition amount of approximately  
8 20,000 dollars as well in order to ensure that the resident  
9 trust accounts can be maintained through the cases.

10 Obviously, they're a very important piece of resident well-  
11 being and resident care in the facilities. So we're certainly  
12 not to upset the relationship between the debtors and National  
13 Datacare.

14 THE COURT: Can I ask you a question about that?

15 MS. KEIL: Sure.

16 THE COURT: Just trying to understand exactly how  
17 that works.

18 MS. KEIL: Sure.

19 THE COURT: So the resident has some money on  
20 deposit?

21 MS. KEIL: Um-hum.

22 THE COURT: But so where is that money actually? I  
23 mean, do they actually have an account someplace?

24 MS. KEIL: Yes.

25 THE COURT: Or is that just an accounting thing where



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1 you keep track of how much it is?

2 MS. KEIL: And this may be -- I may be jumping the  
3 gun in terms of addressing that in the cash management space.  
4 But I believe that there is an account for the various  
5 facilities that there is effectively a trust account where  
6 there is a ledger that when accounts for funds held on each  
7 residents' behalf are dispersed or assigned, that ledger is --  
8 that ledger notes the disbursement, for example. So I believe  
9 there's one resident trust account per facility. And then  
10 amounts can be deposited for various residents in those  
11 facilities.

12 I think there is a resident care or resident trust  
13 account and then also a care cost account. And then those, I  
14 think per facility, there's two accounts. So it's the  
15 resident trust account, where that kind of money is spent --  
16 or is kept, and then there's a care cost account that from the  
17 resident trust account, when the debtor wants to use the  
18 funds, they can transfer from the resident trust account to  
19 the care cost account and then use the amounts to pay for  
20 services or for petty cash purposes, if that makes sense.

21 So I think, again, I'll defer to my colleague on the  
22 cash-management front, but I believe there are two accounts  
23 per facility, one, a resident trust account where the money is  
24 kept, and then the resident can elect to, at their discretion,  
25 transfer funds from that resident trust account. I think they



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1 have to obviously request those amounts be transferred. But  
2 once they're transferred into the care cost account, the  
3 residents can use the funds in the care cost account to pay  
4 for services and the like, if that makes sense.

5 THE COURT: Okay. And this may be a question for  
6 your colleague as well, but so I take it those funds,  
7 whatever's in the resident trust accounts, is not reflected in  
8 the -- for example, the cash on hand or is not included in the  
9 cash collateral budget that's part of the -- part of the  
10 financing because obviously, you said there are 3.2 million  
11 dollars in there, but there's only 5 million dollars in the  
12 bank account.

13 MS. KEIL: Right. Yes, agreed. So I think, because,  
14 again, we are trying to make the point that those are not  
15 estate funds, in other words, the debtors don't have access to  
16 those funds, they are not included in the overall cash  
17 balances.

18 THE COURT: But that's I would expect. That's what I  
19 was just trying to confirm.

20 MS. KEIL: Yep. Yep. Yes. So that 3.2 -- yeah,  
21 I'll allow my (indiscernible).

22 MR. HAAKE: That's correct, Your Honor. My colleague  
23 did a good job of outlining --

24 THE COURT: You want to tell me who you are  
25 because --





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1 MR. HAAKE: Oh, my apologies.

2 THE COURT: That's okay.

3 MR. HAAKE: Your Honor, Jack Haake on behalf of the  
4 debtors, McDermott Will & Emery.

5 The resident trust accounts are administered by  
6 National Datacare, so they keep a ledger. But they are in  
7 actual bank accounts at the facility level. And so as money  
8 goes in and goes out of those accounts, National Datacare  
9 keeps a running ledger of it. Those accounts, there's a  
10 surety bond for them. There's certain regulation that --  
11 there's sort of requirements for those accounts. And so  
12 that's how those accounts are handled.

13 THE COURT: Okay. Perfect. That's --

14 MR. HAAKE: Yeah.

15 THE COURT: Yeah, I won't say that's what I was  
16 hoping for, but that's kind of what -- the way you were  
17 describing it, that's what you might hope they worked that  
18 way, and it sounds like it does. And so I take it when you  
19 were talking about how much cash the debtor has or how much  
20 it's going to use, those amounts aren't included?

21 MR. HAAKE: That's correct, Your Honor.

22 THE COURT: Very good.

23 MS. KEIL: Thank you, Your Honor. So I think that's  
24 the extent of the relief sought through the motion. So unless  
25 Your Honor has any additional questions, the debtors



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1 respectfully request that the resident programs be -- resident  
2 programs order be entered authorizing continuation of their  
3 reform programs as well as their maintenance of the trust  
4 accounts and the cost report settlement process.

5 THE COURT: Okay. I assume we talked about the  
6 Medicare accounts as well, and I guess that was just resolved  
7 or just filed your reports in May. And you think you -- well,  
8 I think you owe two-to-three-million dollars, something in  
9 that --

10 MS. KEIL: Yes, Your Honor.

11 THE COURT: -- friendly neighborhood?

12 MS. KEIL: Yes. The reports were filed at the end of  
13 May, and the debtors anticipate that they could owe  
14 approximately up to 2.4 million dollars based on the  
15 reconciliation for amounts owed for 2023, approximately 2.1 of  
16 which may come due in the next month or so depending on the  
17 timing of reconciliation. Right. We've submitted the  
18 reports. Medicare has to go through them and reconcile --

19 THE COURT: Right.

20 MS. KEIL: -- those amounts. And then once they get  
21 back to us, those amounts will be paid either via a check, I  
22 believe, or can be also offset from future payments by  
23 Medicare.

24 THE COURT: Right. And I take it, the latter is what  
25 they would do if you didn't -- if you didn't voluntarily pay



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1 them.

2 MS. KEIL: Correct. Yes.

3 THE COURT: That's what they --

4 MS. KEIL: Absolutely. So this particular portion of  
5 the motion, again, that participation and those reports are  
6 not voluntary. The debtors have to submit those reports in  
7 order to be a participant in the Medicare program.

8 THE COURT: Right. And they'd get collected anyway,  
9 one way or another --

10 MS. KEIL: Correct. Correct.

11 THE COURT: -- on that account?

12 MS. KEIL: Whether we pay then by check or not, they  
13 will be collected in some form or fashion by Medicare, yes.

14 THE COURT: Okay. All right. Thank you.

15 I see the U.S. Trustee would like to be heard with  
16 regard to this motion?

17 MS. KOLBA: Your Honor, Lindsay Kolba on behalf of  
18 the United States Trustee. No issues with the motion but just  
19 wanted to clarify for the Court that the United States  
20 Trustee, with respect to the resident trust accounts, and Mr.  
21 Adams may get into this, we have requested the debtors'  
22 counsel provide a copy of the surety information or the  
23 bonding information for those resident trust accounts. And so  
24 they've agreed to provide that to our office.

25 THE COURT: Okay. Very good.



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1 MS. KOLBA: So we'll be working through that over the  
2 next few days.

3 THE COURT: Very much appreciate it.

4 Anybody else wish to be heard with regard to this  
5 particular motion?

6 No one in the courtroom. No one online. All right.  
7 I think I asked my questions, and I got the answers maybe that  
8 I was either expecting or hoping for. So it seems to me that  
9 all of the relief requested is certainly necessary and  
10 appropriate in operating this business and makes a whole lot  
11 of sense. So that motion will be granted if you'll present an  
12 order.

13 MS. KEIL: Thank you, Your Honor. The last item I  
14 will be addressing today is item number 7, which is the  
15 debtors' motion seeking authority to pay pre-petition amounts  
16 owed to certain resident care and safety vendors that was  
17 filed at docket number 9.

18 In the ordinary course of business, the debtors  
19 require the services of certain vendors which are essential to  
20 the safety and well-being of the residents, maintenance  
21 service provider and the like. The debtors are concerned that  
22 certain of these vendors, particularly those who service rural  
23 facilities, will not be willing to continue to service those  
24 facilities, including making repairs in the coming summer  
25 months, without payment of their pre-petition amounts.



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1 As we've mentioned here today, we discussed this  
2 morning this motion with U.S. Trustee. And at their request,  
3 we've prepared a short proffer from the debtors' chief  
4 structure office Mr. Jones that walks through the necessity  
5 payments, and it outlines the analysis that will be undertaken  
6 by the debtors prior to any such payment.

7 If it pleases the Court, I am prepared to read the  
8 proffer into the record, if that works for you.

9 THE COURT: Okay.

10 MS. KEIL: Mr. Jones, obviously, being subject --

11 THE COURT: Let me make sure no one else objects to  
12 taking this evidence by proffer.

13 Any objection to taking a proffer of evidence related  
14 to this motion through a proffer of the testimony of the CRO,  
15 who is here to be cross-examined if necessary?

16 All right. Hearing no objection, you can proceed  
17 with the proffer.

18 MS. KEIL: Thank you, Your Honor.

19 "If called to testify, Mr. Jones would testify that  
20 there are certain resident care vendors who provide  
21 maintenance and other related services to the debtors on a  
22 regular basis and play a crucial role in the debtors' ability  
23 to maintain quality care, safety, and general welfare of their  
24 residents.

25 "Mr. Jones would testify that the disruption of such



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1 services from the resident care vendors could jeopardize the  
2 debtors' ability to maintain legally mandated resident care  
3 and safety standards in their facilities. Mr. Jones would  
4 further testify that many of the debtors' facilities operate  
5 in remote, rural locations, where finding suitable  
6 replacements for goods and services provided by the resident  
7 care vendors would be particularly difficult, time consuming,  
8 and expensive.

9 "Mr. Jones would further testify that if not paid for  
10 outstanding pre-petition services, the resident care vendors,  
11 particularly those in those remote rural locations, may not be  
12 willing to provide services to the debtors on a post-petition  
13 basis. Mr. Jones would further testify that before paying any  
14 pre-petition claims of a resident care measure, the debtors  
15 and their advisers will make a good-faith determination that  
16 the payment of any such resident care vendor claim is actually  
17 essential to the preservation of the debtors' estates.

18 "Mr. Jones would further testify that in such  
19 determination, the debtors will consider, among other things,  
20 whether the resident care vendor is a sole source of  
21 limited -- are a limited-source supplier within the areas in  
22 which one or more of the facilities operate, whether the  
23 urgency of the requisite services merits payment of the  
24 resident care vendor claim, and" whether the time and  
25 resources expended -- let me do that again -- "whether the



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1 time and resources expended to find and retain a replacement  
2 of such resident care vender would be significant.

3 "Mr. Jones would further testify that the debtors and  
4 their advisors will also consider whether the loss of the  
5 resident care vendor would unexpectedly jeopardize the care,  
6 safety, and general welfare of the facilities' residents. Mr.  
7 Jones would further testify that only the resident care  
8 vendors that satisfy such analysis will be paid in order to  
9 ensure that only the resident care vendors who are most  
10 essential to preserving residents' safety and well-being in  
11 the facilities receive payment of their pre-petition claims.

12 "In conclusion, Mr. Jones would testify that payment  
13 to the resident care vendors in the amounts requested in the  
14 resident care vendor motion is necessary to the continued  
15 operation of the debtors' facilities and the provision of  
16 resident care."

17 That concludes Mr. Jones' proffer with respect to  
18 that motion.

19 THE COURT: All right. Does anybody care to cross-  
20 examine Mr. Jones with regard to his proffer?

21 Okay. Please proceed.

22 MS. KEIL: Thank you, Your Honor. The U.S. Trustee  
23 has also requested a couple of modifications to this order  
24 which unfortunately are not reflected in the redline, but we  
25 will certainly submit to Mr. Adams and Ms. Kolba before we



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1 submit to chambers. And I'll just walk through what they are  
2 in the interim.

3 THE COURT: Okay.

4 MS. KEIL: Number one, which actually is reflected in  
5 order in the redline is that we have added in language  
6 regarding customary trade terms with these particular vendors.  
7 In other words, in exchange for payment of their pre-petition  
8 claim, the debtors and their resident care vendors will  
9 interact on customary trade terms in the ordinary course that  
10 existed pre-petition as well.

11 If for some reason a resident care vendor that gets  
12 paid its pre-petition amount is not willing to grant those  
13 customary trade terms, the debtors seek -- I believe the  
14 language in the order is the debtors seek authority to  
15 essentially declare such payments as unauthorized post-  
16 petition transfers and sort of reverse those payments. So in  
17 other words, we are focused on continuing getting those  
18 services on a post-position basis in the same customary trade  
19 terms as were given pre-petition. So that's item number 1,  
20 and that will be reflected in the revised order.

21 The U.S. Trustee has also requested that we work  
22 with -- that the debtors provide a list of these vendors. We  
23 did not attach one to the motion, but we will certainly  
24 provide that list to the U.S. Trustee's office in the near-  
25 term, a list of the vendors that are contemplated to be paid





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1 under this motion.

2 I did not mention it before, but this motion also, as  
3 Your Honor is likely aware, has caps on it, 25,000 per vendor  
4 for per facility, up to 200,000 dollars on an interim basis.  
5 So we will certainly provide a list of vendors to the Trustee.

6 Additionally, the U.S. Trustee has requested that we,  
7 the debtors, keep track of, in a matrix, essentially, all  
8 payments that are made to these vendors, any and all pre-  
9 petition claims that are paid, with the name of the vendor,  
10 the amount that was paid, the date. So we will certainly  
11 provide and maintain that matrix and certainly can provide it  
12 to the U.S. Trustee, as well as any other party-in-interest  
13 that requests it, including a committee once they are  
14 appointed.

15 Those revisions are admittedly not in the order. Did  
16 not get the chance to put those in in advance of this hearing.  
17 But we will incorporate those and send a redline to the U.S.  
18 Trustee for signoff in advance of uploading, subject to Your  
19 Honor's approval.

20 THE COURT: Okay. Mr. Adams.

21 MR. ADAMS: Thank you, Your Honor. Jonathan Adams on  
22 behalf of the United States Trustee. Just very briefly, I  
23 think Ms. Keil's presentation hits most of our high points.  
24 We do appreciate the proffer. That does help us a great deal.

25 Again, well, we do want that list of critical



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1 vendors. I believe we talked about getting that in the next  
2 seven-to-ten days, something like that. Other parties-in-  
3 interest may request that. And our idea of a creditor  
4 committee, if they want to see that, other parties-in-  
5 interest. And then the matrix, again, will also be available  
6 both to our office and to any other party-in-interest upon  
7 request. And I think we think that that information be  
8 critical, that way everybody can just track and see what's  
9 going on.

10 Of course, this is an interim order. It'll come up  
11 for final approval here at our next time we're together, I  
12 suppose. But for --

13 THE COURT: Right. And the final order would just  
14 increase the cap, from what I recall.

15 MR. ADAMS: That is right and give anybody else a  
16 time to come and talk about if they would like. Thank you,  
17 Your Honor.

18 THE COURT: Very good. Just so I understand that, I  
19 know there's a -- so is it -- it's 25,000 per vendor, and is  
20 it also 25,000 for facilities? So basically you could pay one  
21 vendor at one facility and not two vendors at the same  
22 facility?

23 MS. KEIL: Yes, Your Honor. I believe what we set  
24 for is the 25,000-dollar cap per vendor per facility. This  
25 issue is predominantly focused on rural and remote facilities.



Colloquy

1 We were just trying to give flexibility to allow for payment  
2 at those particular facilities, as well as any of the debtors'  
3 facilities. But yes, the cap is 25,000 per vendor per  
4 facility.

5 THE COURT: Okay. So that's what I'm trying to  
6 figure out exactly what that means, not that again --

7 MS. KEIL: Okay. Apologies.

8 THE COURT: But so if there's a vendor that does  
9 business with multiple facilities --

10 MS. KEIL: Um-hum.

11 THE COURT: -- can they get 25,000 for each of the  
12 facilities they do business with?

13 MS. KEIL: I can certainly confirm. I don't believe  
14 that there are repeat -- I believe that these particular  
15 vendors are based at one facility. That's predominantly the  
16 focus.

17 THE COURT: Okay.

18 MS. KEIL: I don't believe that they're --

19 MR. SIMON: Sorry, Your Honor. The intention is yes.  
20 Yes, it would apply across the facilities. So if someone had  
21 a claim at one facility and they serviced two facilities, they  
22 would technically get up to 50,000.

23 THE COURT: Okay. And then the reverse, I guess, for  
24 any particular facility, is that each facility is limited to  
25 twenty-five? I'm trying to figure out what the per-facility



Colloquy

1 thing means.

2 MS. KEIL: I think it was focused on if a vendor has  
3 a claim at one particular facility, let's say one of their  
4 facilities is in Mississippi, they would be entitled to  
5 payment up to the 25,000-dollar cap at that Mississippi  
6 facility. And then if for some reason they service the  
7 Florida facility as well, they would have availability of up  
8 to the --

9 THE COURT: Okay.

10 MS. KEIL: -- 25,000-dollar cap there too.

11 THE COURT: Okay. Thank you for explaining that.

12 MS. KEIL: Apologies for the lack of clarity there in  
13 the order.

14 THE COURT: Sometimes, I'm a little slow so --

15 MS. KEIL: No, no, no.

16 THE COURT: -- I appreciate you --

17 MS. KEIL: Not at all, Your Honor. Not at all. And  
18 again, I think, as Mr. Adams note, the 200,000 dollars is a  
19 cap on an interim basis.

20 I will say, just to clarify, we are happy to provide  
21 the matrix to the U.S. Trustee and the committee, certainly.  
22 I don't know that we are comfortable providing to necessarily  
23 any party-in-interest.

24 THE COURT: Yeah. Some vendor might want to see if  
25 they're on the list.



Colloquy

1 MS. KEIL: Correct. Right. So we certainly are  
2 happy to the U.S. Trustee and any committee that's appointed.  
3 But just wanted to note that I don't know that we can go quite  
4 as broadly --

5 THE COURT: Yeah.

6 MS. KEIL: -- as providing it to any party -- to any  
7 party-in-interest.

8 THE COURT: And I suppose you'll figure out what you  
9 do for one of the vendors is on the committee. Okay.

10 MR. ADAMS: Your Honor, we're fine with that for a  
11 limitation.

12 MS. KEIL: Okay. Thank you, Your Honor. So we will  
13 reflect that in the order as well with respect to the matrix  
14 and the list of vendors.

15 THE COURT: Okay. Well, before we toddle on, I also  
16 want to make sure, is there anyone else who wishes to be heard  
17 with regard to this particular motion?

18 Hearing none, again, it seems to make a lot of sense  
19 in the context of the debtors' business and the places it does  
20 business. Provides the debtor with some flexibility without  
21 spending too much money to try to keep its business operations  
22 running smoothly. So I'll approve the motion if you'll  
23 present an order on it on an interim basis, and obviously --

24 MS. KEIL: Yes, of course.

25 THE COURT: -- have a final hearing, where I guess



Colloquy

1 you'll be seeking a larger pool by the time --

2 MS. KEIL: Yes.

3 THE COURT: -- we get to a final hearing.

4 MS. KEIL: Yes. I believe on a final basis we  
5 currently propose same 25,000 dollars per vendor --

6 THE COURT: Right.

7 MS. KEIL: -- per facility, but we've increased the  
8 aggregate cap to 500,000.

9 THE COURT: Right.

10 MS. KEIL: Obviously, that's not up for hearing  
11 today, but that's a preview of the relief --

12 THE COURT: Yeah.

13 MS. KEIL: -- we'll be requesting in the future.

14 THE COURT: Okay. Very good.

15 MS. KEIL: Thank you, Your Honor. That actually  
16 concludes my portion of today's hearing, so with that, I will  
17 transfer the podium to my colleague Mr. Haake.

18 THE COURT: Very good.

19 MS. KEIL: Thank you, Your Honor.

20 MR. HAAKE: Good afternoon again, Your Honor. Jack  
21 Haake of McDermott Will & Emery on behalf of the debtors.

22 THE COURT: And you get to start with insurance.

23 MR. HAAKE: I get to start with insurance. I was  
24 going to start, actually, by saying, this is my first time to  
25 Georgia, so I'm thrilled to be able to visit Newnan.



Colloquy

1 THE COURT: Welcome.

2 MR. HAAKE: It's been lovely. Your Honor, you are  
3 correct. The next thing is the insurance motion.

4 The debtors are in a segment of the -- in an industry  
5 that's insurance-intensive, and so it's important that the  
6 debtors are able to continue to maintain their insurance.  
7 That insurance includes a number of things. And the debtors  
8 are seeking to pay on an uninterrupted basis all the premiums,  
9 the deductibles, the administrative costs, the brokers fees,  
10 anything that's required to keep those insurance policies in  
11 place so that the debtors can continue to rely on those  
12 policies. We want to keep the U.S. Trustee's office happy and  
13 with the knowledge that we have those insurance policies in  
14 place.

15 Some of the highlights, Your Honor, in terms of those  
16 policies, generally, they're one year in length. We do  
17 finance some of those premiums, and that's through two  
18 different premium financing agreements. And we're seeking to  
19 be able to continue that. The debtors also, as we discussed,  
20 maintain surety bonds. That's a part of the resident trust  
21 accounts. And so the current annual premiums and brokers fees  
22 for the insurance policies total approximately 6.2 million  
23 dollars. And the debtors on an interim basis are seeking to  
24 be able to expend 100,000 dollars for outstanding endorsements  
25 and prorated pre-petition premium financing agreements



Colloquy

1 installments.

2 So that is the high level for the insurance. Does  
3 Your Honor have any questions about the insurance?

4 THE COURT: So not especially. That said, the surety  
5 bond's obviously very important part of the business as to the  
6 premium finance. I understand the way that works. If you  
7 don't pay the -- if you don't pay them, they cancel the  
8 insurance and get the refund of the unearned premium, then you  
9 don't have insurance and you pay the money anyway, so all  
10 that --

11 MR. HAAKE: That's correct.

12 THE COURT: -- seems to make some sense to me.

13 MR. HAAKE: And so with that, Your Honor, we would  
14 request that the order be entered for insurance on an interim  
15 basis.

16 I also, before I forget, and I actually also have  
17 some redlines that I'd like to pass up. I'll go ahead and  
18 pass up all of mine at one time, if I may approach.

19 THE COURT: You may.

20 MR. HAAKE: One thing that I will -- that I failed to  
21 note, but Mr. Adams rising reminded me, is that the United  
22 States Trustee has requested that a cap be put in in the  
23 interim order. And so we have added language to the third  
24 paragraph of the proposed order that provides that in the  
25 pendency of the final order pre-petition amounts owed would





Colloquy

1 not exceed the 100,000 dollars that we expect to need to pay  
2 within the next interim period. And then the U.S. Trustee has  
3 also requested that we add a line that is not in the redline  
4 that we talked about here in court, which is for the of  
5 avoidance of doubt, post-petition insurance obligations would  
6 be paid in the ordinary course.

7 And so with that, I will actually turn the podium  
8 over to Mr. Adams and let him speak on behalf of the U.S.  
9 Trustee.

10 MR. ADAMS: Your Honor, just very briefly. Jonathan  
11 Adams on behalf of the United States Trustee.

12 We did want the cap in there not to limit the debtor  
13 but just to let all the parties-in-interest know what cost we  
14 were talking about. I think that gives everybody a pretty  
15 good flavor pretty quickly of the cost being approved here on  
16 the interim basis. And again, we just wanted to be clear that  
17 ongoing insurance will be paid in the ordinary course. We  
18 appreciate --

19 THE COURT: Right. And of course --

20 MR. ADAMS: -- working with us on that matter.

21 THE COURT: -- the overall numbers are substantially  
22 larger than that if it keeps going past the final hearing.

23 MR. ADAMS: Absolutely, Your Honor.

24 MR. HAAKE: Well, and Your Honor, I think actually a  
25 final point on that in terms of -- this is Jack Haake again



Colloquy

1 for the debtors. If it does go beyond a final hearing, we  
2 will probably need additional interim relief so for additional  
3 amounts.

4 THE COURT: Right.

5 MR. HAAKE: Right.

6 THE COURT: I understand.

7 MR. HAAKE: So --

8 THE COURT: All right. Does anybody else should be  
9 heard regarding the insurance and the surety bond motion?

10 All right. Hearing none, motion seems certainly  
11 appropriate and well-taken. And if you'll present an order,  
12 we'll grant it.

13 MR. HAAKE: Thank you, Your Honor. That takes us to  
14 the next item on the agenda for today, which is the taxes  
15 motion.

16 Your Honor, the debtors pay a number of taxes. Some  
17 taxes, I've never even heard of before, like a litter tax.  
18 The taxes are located in paragraph 10 of the motion. I think  
19 that's a nice chart that kind of summarizes everything. As  
20 Your Honor will see, the largest is the provider taxes. Those  
21 are crucial here because we can be shut down in terms of our  
22 operating facilities if we don't maintain and pay the provider  
23 taxes to the different states where we operate. And so the  
24 taxes also include personal property, franchise taxes, and  
25 certain real property taxes.



Colloquy

1 We also note that there is an ongoing audit at least  
2 one of the facilities. And so in this motion, we're seeking  
3 the ability to pay the taxes and to also satisfy any audit  
4 amounts that arise out of that audit that's on-going.

5 With that, Your Honor, does Your Honor have any  
6 questions as to the taxes?

7 THE COURT: Okay. Well, yeah. The bulk of the taxes  
8 that we're talking about your other provider taxes you  
9 mentioned. And so if you don't pay those, they can, automatic  
10 stay notwithstanding, shut you down? Is that what I'm  
11 understanding?

12 MR. HAAKE: Your Honor, I'm not a regulatory  
13 attorney, so I don't know the intersection of how the policing  
14 and regulatory exception may apply here. But we certainly  
15 don't want to tempt fate on any of those.

16 THE COURT: You don't want to litigate that issue?  
17 No, I understand. And these are charges per day per patient,  
18 for the most part?

19 MR. HAAKE: I don't know that that's necessarily how  
20 it's accrued. It might be on a monthly or even a quarterly  
21 basis. And they may be rolling in terms of when they're due  
22 by location.

23 THE COURT: Right. Yeah, I think your motion said  
24 something about them being due generally, like, quarterly --

25 MR. HAAKE: Yeah.



Colloquy

1 THE COURT: -- but they're calculated based on how  
2 many patients you have over what period of time.

3 MR. HAAKE: Yes, Your Honor.

4 THE COURT: Okay. And then, in the motion, there are  
5 also real property taxes. And I ran over and over again how  
6 the debtor doesn't own any real estate so tell me how those  
7 are in there.

8 MR. HAAKE: Correct, Your Honor. So the debtors are  
9 part of leases. As part of leases that they have, there's  
10 pass-through real property taxes that basically pass through  
11 to the operators. And so we're responsible for those taxes.

12 THE COURT: Okay. So those are effectively rent  
13 under your leases in those circumstances? And sometimes, the  
14 landlord pay taxes themselves. Sometimes they make the tenant  
15 pay it.

16 MR. HAAKE: Because of the way that the leases are  
17 structured, I think you could look at it as a part of the  
18 lease, but it is for the taxes itself, the payments that are  
19 required under the lease.

20 THE COURT: Okay. And those are obviously a  
21 substantially smaller amount than the --

22 MR. HAAKE: Right.

23 THE COURT: -- provider taxes but --

24 MR. SIMON: If I may clarify, Your Honor.

25 THE COURT: Sure.



Colloquy

1 MR. SIMON: Again, Dan Simon, McDermott Will & Emery.  
2 It is part of the rent under there. There was  
3 actually a much larger pre-petition arrearage as we didn't  
4 make rent payments to landlords, including Omega, before.  
5 We're not seeking that, but we're just trying to catch up on  
6 some of the leases to make sure that we're not in default on  
7 the remaining leases so --

8 THE COURT: Okay. All right.

9 MR. SIMON: But is rent, capital R rent, under those  
10 leases --

11 THE COURT: Right.

12 MR. SIMON: -- that's passed through.

13 THE COURT: They're real property taxes you owe  
14 because you're the tenant and the leases says you're supposed  
15 to pay them?

16 MR. SIMON: Correct. And if they're not paid, either  
17 the landlord to pay it, or else a municipality will put a lien  
18 on the building.

19 THE COURT: Right. Okay. I see Mr. Adams anxiously  
20 waiting to be heard so any --

21 MR. HAAKE: Yeah, I'll steal his thunder just a  
22 little bit, Your Honor --

23 THE COURT: He doesn't like it when his thunder gest  
24 stolen, yeah.

25 MR. HAAKE: -- and provide that we have also agreed



Colloquy

1 to a cap in the interim order, which is reflected in the  
2 redline.

3 THE COURT: Again, well, and how much was that? I  
4 got to dig up the --

5 MR. HAAKE: And the cap is at the interim fee -- the  
6 interim tax amount of 5.5 million. That can be found in the  
7 redline at paragraph 3.

8 THE COURT: Do I have the redline? Oh, no. That's  
9 the wages motion. Okay. All right.

10 Well, Mr. Adams, your thunder having been stolen,  
11 you're still going to --

12 MR. ADAMS: I'll press forward anyway, Your Honor. I  
13 appreciate it.

14 THE COURT: You'll roll forward with whatever it is  
15 you have left.

16 MR. ADAMS: That's right. Jonathan Adams on behalf  
17 of the United States Trustee.

18 And that's right. And again, same concept here in  
19 this motion as the last. We just wanted to give all parties-  
20 in-interest a flavor of what the total cost here was, and  
21 that's why you want there to be a cap number, not to cap the  
22 debtor on what they can pay. So we appreciate the debtors'  
23 counsel working with us on that matter.

24 THE COURT: Okay. Very good. Anybody else wish to  
25 be heard with regard to this particular motion?



Colloquy

1 If not, the Court finds the motion is well taken and  
2 justified, and we'll grant it if you'll present an order.

3 MR. HAAKE: Thank you, Your Honor. Moving on, I will  
4 move to the utilities motion, which is the tenth item on our  
5 agenda. With the water main breaks, we definitely understand  
6 how important the utilities are, and we want to ensure that  
7 the lights are not turned off at our facilities.

8 Your Honor, the debtors operate and require a number  
9 of utilities that include electricity, natural gas, water,  
10 telephone, waste removal, telecommunications, and other  
11 services. On average, prior to the petition date, the debtors  
12 spent approximately 1.1 million dollars each month on account  
13 of utility services.

14 The debtors also utilize an administrator for certain  
15 of these utilities, and we're seeking around 3,100 dollars of  
16 fees for that administrator to continue to administrate and  
17 keep our utility payments streamlined.

18 Under the Bankruptcy Code, utility providers are  
19 entitled to certain adequate protection. And so what we've  
20 done with our motion is we're requesting a procedure or  
21 protocol so that we can understand the amount of adequate  
22 protection. We're proposing two weeks' worth of adequate  
23 protection be set in an account that's been established that  
24 we have. And so that will be approximately 550,000 dollars.  
25 So we believe that that should provide the adequate



Colloquy

1 protection.

2 I will note for the Court that during this  
3 proceeding, we have received one email from one of the utility  
4 providers that's proposing language. We haven't had time to  
5 review or digest that. So that's something that we'll be  
6 working with them on towards the final order. But for the  
7 interim purposes, we are seeking to be able to establish a  
8 protocol that provides time for us to get information on what  
9 they think is adequate and the reasons why they don't, why  
10 they disagree with the amount that we're proposing as adequate  
11 assurance, and for time for us to work through that.

12 The United States Trustee's office has requested --  
13 we proposed fourteen days. The United States Trustee's office  
14 has requested that we provide a little additional time for  
15 utilities to raise concerns about adequate protection. We  
16 don't have a specific amount of time, but something like three  
17 or four business days before the second day hearing is what's  
18 been requested. And so we will work with the U.S. Trustee's  
19 office to pin down that date. But with that --

20 THE COURT: I take it we're going to mail them  
21 something about the --

22 MR. HAAKE: They will get notice.

23 THE COURT: We'll mail them this interim order that  
24 tells them they have -- that tells them that -- yeah, because  
25 I know. The way the mail works these days, a few extra days





Colloquy

1 probably be a good idea.

2 MR. HAAKE: Yes, Your Honor. So with that, Your  
3 Honor, unless Your Honor has any specific questions on the  
4 utilities, I will cede the podium to Mr. Adams.

5 THE COURT: We, I'm going to -- I did note the  
6 lengthy list of utilities involved with these various debtors.  
7 Are there a few major ones and a whole bunch of little ones,  
8 or are they all --

9 MR. HAAKE: Because of the geographical disperse-ness  
10 of our facilities, I think that you see some overlap between  
11 them. But there are also very specific and regional  
12 utilities, I mean, at the local and city level. So I think  
13 you get a little bit of both.

14 THE COURT: Okay. And you're about taking 550,000  
15 dollars and putting it in an account that you have?

16 MR. HAAKE: Correct. It's segregated from everything  
17 else. And when we get to the cash management motion, I can  
18 show you on the schematic where it sits.

19 THE COURT: Okay.

20 MR. HAAKE: But it is separate and apart.

21 THE COURT: And so is there ever a proposal to turn  
22 it over to any of the utilities, or are you going to hold it  
23 as security for them?

24 MR. HAAKE: We hold it as security. Essentially,  
25 we --



Colloquy

1 THE COURT: I mean, it would be a lot of people to  
2 send checks to if --

3 MR. HAAKE: Correct.

4 THE COURT: -- having looked at the list but --

5 MR. HAAKE: I think, the way that it operates, Your  
6 Honor, is that we continue to operate in the ordinary course.  
7 We pay our bills as they come due. It just sits as collateral  
8 for two weeks' worth of utility burn, basically, in the event  
9 that there is any issue with timing. Yes.

10 THE COURT: Okay. And it's shared collateral between  
11 all the utilities?

12 MR. HAAKE: Correct.

13 THE COURT: Essentially?

14 MR. HAAKE: Yeah.

15 THE COURT: Okay. All right. Mr. Adams, you get to  
16 go first.

17 MR. ADAMS: Thank you, Your Honor. Again, Jonathan  
18 Adams on behalf of the United States Trustee.

19 And as debtors' counsel mentioned, we did ask to  
20 extend that time for utilities to come in and object. Again,  
21 we set, I think, three or four days prior to the final  
22 hearing, which should get us into the low twenties in time,  
23 and again, given the way that the facilities are physically  
24 dispersed and given that some of these are quite small and  
25 wanted to give them as much time as possible to come in and



Colloquy

1 voice any issue. And so we appreciate debtors' counsel being  
2 willing to work with us on this matter.

3 THE COURT: All right. Anybody else wish to be heard  
4 with regard to the --

5 Oh, was that someone who wished to be heard? Someone  
6 certainly made some noise.

7 Again, I'll ask again, does anybody else wish to be  
8 heard with regard to the utilities motion?

9 Okay. Hearing no further noise, it sounds a  
10 reasonable way to proceed in the interim while we try to  
11 figure out more precisely what all the numbers might be if  
12 these aren't the right ones. And I do agree a little more  
13 time probably makes a world of sense to reach some reasonable  
14 resolutions. So your motion will be granted. Please present  
15 an order.

16 MR. HAAKE: Thank you, Your Honor. That takes us to  
17 what we colloquially call the employee or the wages motion.

18 Your Honor, I think that the opening was very  
19 appropriate here. The debtors' business is people, and that's  
20 the residents and the employees. And we require both for the  
21 business to operate. And so this motion, what it does is it  
22 seeks to perform and honor the different employee compensation  
23 benefits to ensure that we keep the people that we rely on and  
24 that are so crucial to the debtors' business.

25 Your Honor, the debtors have approximately 3,600



Colloquy

1 employees. That includes salaried, hourly, and part-time  
2 employees. And any given day that can fluctuate up or down,  
3 but those really are the backbone of this industry. And  
4 that's RNs, skilled nurses, all the way down to the janitors  
5 that make sure the facilities are clean and kept up for the  
6 residents.

7 The debtors have an aggregate payroll that averages  
8 approximately 5.7 million dollars per pay period. The debtors  
9 have two pay periods. They have a cycle 1 and a cycle 2.  
10 None of the debtors' employees are over the 15,150-dollar cap  
11 set by the Bankruptcy Code.

12 The debtors also seek to pay independent  
13 contractors. The majority of those are medical directors that  
14 are in charge of overseeing the care for the residents and  
15 overseeing the nurses and things like that. As of the  
16 petition date, the debtors owe approximately 159,000 dollars  
17 of accrued, unpaid amounts for independent contractors.

18 The debtors also rely on staffing agencies. There's  
19 certain regulatory requirements for staffing needs for  
20 residents, so you have to have that threshold to be able to  
21 operate. So the staffing agencies allow for us to plug gaps  
22 where we need to be able to continue to operate and meet those  
23 regulatory requirements.

24 Your Honor, I won't belabor the benefits. This is  
25 typically the longest for a stay motion. There are a number



Colloquy

1 of them. So I'll just hit at a high level, and if Your Honor  
2 has any questions, I'd be happy to speak more specifically.

3 But there are time-off benefits and health care  
4 benefits. There are insurance benefits. There are certain  
5 reimbursable business expenses, people that have to travel and  
6 get their funds reimbursed. And there are also several bonus  
7 programs.

8 The bonus programs, just taking a minute to focus on  
9 those, include things that are really a part of the  
10 compensation of the employees. That includes sign-on. We  
11 want to attract the best talent that we can for our nurses and  
12 our RNs, our people that are going to be interacting with the  
13 residents. And so we want to make sure that we're  
14 incentivizing them and that they get paid what we promised  
15 we'd pay them when they came on.

16 There's also a worker's compensation program that's  
17 funded that provides insurance basically for the workers. And  
18 there's also a 401(k) plan and a severance program, though  
19 that isn't up today. That will be something that will be  
20 addressed with the final order.

21 And a table is available in the motion, which I'm  
22 sure Your Honor saw, that provides an overview of what needs  
23 to be paid in the interim period to cover all of these  
24 employee benefits.

25 Prior to the hearing, Your Honor, the U.S. Trustee



Colloquy

1 had a discussion with us on this proposed order. And I just  
2 want to point out two things that are going to be added at the  
3 request of the U.S. Trustee.

4 The first can be found at paragraph 6 of the redline  
5 that we handed up. And that is just clarification that the  
6 PTO will not be paid in the interim period unless it's  
7 required by applicable nonbankruptcy law or relevant  
8 collective bargaining agreements.

9 And the other thing is that the debtors are  
10 authorized to provide payments for certain of the employee  
11 benefits up to a cap, which is similar to the cap in the other  
12 orders that we've discussed today, provided, however, that the  
13 care center leadership incentive plan won't be paid in the  
14 interim and would be something that would be addressed as part  
15 of the final order.

16 THE COURT: Okay. I almost feel like I should talk  
17 fast because looking at this motion, I think, doesn't cycle  
18 1 -- isn't today payday for --

19 MR. HAAKE: So cycle 1 was drawn on Thursday of last  
20 week and was out the door before we filed on Sunday --

21 THE COURT: Okay.

22 MR. HAAKE: -- and the payday for -- it went out to  
23 probably ADP's accounts, and it probably hit employees'  
24 accounts on the 3rd, so yesterday.

25 THE COURT: Okay. Okay. So I don't have to worry



Colloquy

1 about that. I don't have to talk faster because thought  
2 people had to get paid today. But it sounds like you took  
3 care of that last week.

4 And so then, cycle 2 is next Monday?

5 MR. HAAKE: Correct, June 10th.

6 THE COURT: Okay. So I was trying to find it. So  
7 the whole thing is about 5.8 million dollars. I was trying to  
8 find that in your cash collateral budget. But it would be  
9 divided between this week and next week in any event, and it  
10 sounds like actually now the cycle 1 part's actually in last  
11 week. So it just appears in a diminished starting cash  
12 balance. Do I have that more or less right?

13 MR. HAAKE: I don't think so. I believe that that  
14 cycle being paid was calculated in as part of the cash  
15 collateral. But I'll cede the --

16 MR. SIMON: That's correct. The starting cash  
17 balance assumed that the payment went out last week. So  
18 the --

19 THE COURT: Right.

20 MR. SIMON: -- starting cash balance was as of,  
21 really, I'd say Sunday. And what you see in the cash  
22 collateral budget is about 3.7 -- it varies between 3.1 and  
23 3.7 in payroll and taxes and benefits on a weekly basis even.  
24 That's because you have the two cycles.

25 THE COURT: Right. And so that's what's going to be



Colloquy

1 paid this week, or is anything going to get paid this week?

2 MR. SIMON: Yeah. It will be funded I believe to ADP  
3 later this week.

4 UNIDENTIFIED SPEAKER: It will fund this week, and  
5 then we'll fund the following week. Our payroll's two weeks  
6 in arrears, so there are two more to be paid.

7 THE COURT: Okay. All right. Think I understand.  
8 And so nobody exceeds the 15,000-dollar payment. Does that  
9 suggest there are no highly paid executives in this outfit  
10 anywhere?

11 MR. HAAKE: Your Honor, there is a CEO that that gets  
12 paid as part of this as well, but he does not exceed the  
13 15,150 on account of pre-petition amounts owed.

14 THE COURT: Okay. All right. And all right. That's  
15 about all I have.

16 I assume, Mr. Adams, do you have anything to add with  
17 regard to this motion?

18 MR. ADAMS: Yeah, Your Honor, just very briefly.  
19 Jonathan Adams on behalf of the United States Trustee.

20 As previously mentioned, we did want the language  
21 regarding the PTO payouts to be limited. From our point of  
22 view, that doesn't fall under 6003(b), subject to the state  
23 regulation and union collective bargaining agreements. We  
24 appreciate them taking that out.

25 As far as the bonuses go, we had some heartburn here





Colloquy

1 about those. But eventually, given the explanation we were  
2 given regarding the sign-on bonuses, which is the overwhelming  
3 majority of what's being paid, understanding that that's part  
4 of the incentive structure that got the employees their start  
5 with, we are comfortable with that. We do appreciate the  
6 debtor holding off on the other, particularly the care center  
7 leadership plan bonuses, until the final hearing so we can get  
8 some more of the parties-in-interest involved. And so we  
9 appreciate putting that cap in the order. Thank you, Your  
10 Honor.

11 THE COURT: Okay. Very good. Anybody else wish to  
12 be heard with regarding to what I'll call the wages motion?

13 All right. Hearing no objections, I guess, my  
14 general view on this, you got to pay the people. And  
15 particularly, I guess, in this industry where I know it sounds  
16 like it's a challenge to find people to work and to keep them.  
17 We don't want any doubt in their minds about their ability to  
18 be paid. So this motion will be approved, subject to the  
19 modifications discussed with United States Trustee, and if  
20 you'll present an order.

21 MR. HAAKE: Thank you, Your Honor. That takes me to  
22 the last thing that I'll be presenting today, and that is the  
23 cash management motion. Your Honor, when we started with  
24 preparing for this case, I was concerned because of the number  
25 of bank accounts. And I would just like to take a moment and



Colloquy

1 point Your Honor to Exhibit C of the cash flow schematic that  
2 was prepared by the Ankura team, which I personally consider a  
3 work of art. It is quite excellent.

4 In a broad way, Your Honor, it's a lot of accounts,  
5 but it's actually simplified when you look at it through the  
6 schematic. Money comes in through the deposit accounts.  
7 There's slightly more nuance to what those deposit accounts  
8 are, which we break out in motion. But largely and at a high  
9 level, the money comes in, flows historically into  
10 concentration accounts, and then those that are under the ABL  
11 with MidCap flow on to MidCap. The non-MidCap concentration  
12 accounts then flow to the main funding account. And then  
13 historically, LaVie would draw funds through the ABL to  
14 operate.

15 So there's a lot of moving pieces, but simplified, it  
16 is a simple structure. There are 500 and I think it's 79 bank  
17 accounts. A large number of those accounts are resident trust  
18 accounts that Your Honor has touched on already. That's not  
19 money that it's being used for operations. That's residents'  
20 money.

21 The other thing that's really a pleasant surprise  
22 here and good news is that most of these accounts are in  
23 approved depositories. And those that aren't are resident  
24 trust accounts or have very small balances below the FDIC  
25 limit.



Colloquy

1           So while we are requesting forty-five days to work  
2 with the U.S. Trustee on the cash management, I personally am  
3 optimistic that this should be a light load in terms of  
4 getting the U.S. Trustee comfortable here.

5           And so what we're asking for today is we're asking  
6 for the ability to continue to maintain this system. This is  
7 crucial and critical because a lot of the accounts receivable  
8 come through these accounts and having that be disrupted would  
9 be a catastrophe. And so having the ability to be able to  
10 continue to have all of this fit together and run is  
11 absolutely essential.

12           We've worked with the U.S. Trustee on a few comments  
13 that I think that -- and I don't want to speak for my  
14 colleague here. But I think that -- I think that we've been  
15 able to work together in terms of explaining the structure.  
16 And the one thing that the United States Trustee has requested  
17 is just the documentation on the resident trust accounts, the  
18 surety bonds that protect those accounts, and that's something  
19 that we'll be working with U.S. Trustee to provide.

20           So unless Your Honor has any questions, I will cede  
21 the podium to the U.S. Trustee.

22           THE COURT: I will say, you have 500-and-something  
23 accounts on the one page, plus some footnotes.

24           UNIDENTIFIED SPEAKER: That's pretty good.

25           THE COURT: Took them eight pages to get 218 entities



Colloquy

1 onto a flow chart so congratulations.

2 Mr. Adams.

3 MR. ADAMS: Again, Jonathan Adams on behalf of the  
4 United States Trustee. Your Honor, just three comments really  
5 quickly.

6 As to the Section 345 waiver, we are able to agree to  
7 a forty-five-day period there. That works for us, and we can  
8 agree to that so we appreciate the debtor including that  
9 timeline and no farther than that. As debtors' counsel  
10 mentioned, with so many of these accounts with CIBC and Wells  
11 Fargo, who are authorized depositories, we are also hopeful  
12 that this is a process that we can fix and get to where we  
13 need to get to quickly.

14 One other thing I don't know that we mentioned but we  
15 talked about briefly, we did ask for inclusion of some  
16 language that just states that the debtor will provide United  
17 States Trustee with documentation showing they comply with 345  
18 as the time period expired.

19 And then as debtors' counsel mentioned, we did ask  
20 for the surety information as to those trust accounts that  
21 we've already discussed.

22 We think with those two accommodations there, the  
23 United States Trustee does not oppose. I would like to see  
24 the language, but we're good other than that.

25 THE COURT: Very good. Anybody else wish to be heard



Colloquy

1 with regard to the cash management motion?

2 Hearing no comments, it does appear to be well-taken.  
3 Seems like a whole lot of work. I'm sure it was a lot of fun  
4 setting this thing up to start with. But if you'll present an  
5 order, we'll grant the motion.

6 MR. HAAKE: Thank you, Your Honor. With that, I will  
7 turn the podium back over to Mr. Simon.

8 MR. SIMON: Your Honor, again, Dan Simon, McDermott  
9 Will & Emery. We've been going about two hours. I just want  
10 to offer -- I don't anticipate the DIP taking terribly long,  
11 but if parties want to take five or ten minutes, I'm certainly  
12 open to it or proceeding.

13 THE COURT: Anybody wish to have a break?

14 I'm okay either way, but I think we probably ought to  
15 just plug along.

16 MR. SIMON: We shall proceed. I wanted to do -- Your  
17 Honor asked a question at the outset, and I wanted to just to  
18 provide a little clarification. Got some additional numbers.

19 The leases, to the extent they're defaulted, we  
20 transferred those, the operations, to new operations as  
21 designated by the landlord. There is no transaction, so if a  
22 lease is terminated and operations are transferred, that  
23 happens basically at the direction of the landlord. This  
24 occurs either whether the underlying real estate is sold and a  
25 new owner leases to a new operator or whether the existing

Colloquy

1 landlord does not sell the real estate and leases to the new  
2 operator. There is no transaction or really sale as part of  
3 that. There's only cooperation by the old operator, that  
4 would be us, in that instance to continue to bill and collect  
5 while waiting for regulatory approval or tie-ins on the  
6 Medicare provider agreements.

7 And I got some clarification on the number of -- you  
8 asked the question of how many different operators. In  
9 Florida, there were roughly sixty operations transfers to  
10 seven different operators. In some instance, that's one or  
11 two at a time. In some instance, it's more. And since  
12 December of 2022, which is really when many of these begun to  
13 be divested, there have been eleven different new operators.

14 THE COURT: Okay.

15 MR. SIMON: With that, Your Honor, the last item on  
16 the agenda is the DIP motion. DIP motion was filed at docket  
17 16. And at docket 16, we find the declaration of Mike  
18 Krakovsky of Stout.

19 Previously, Your Honor entered into evidence Mr.  
20 Jones' declaration. That also covered the reasonableness of  
21 the DIP, the budget, the need for the DIP. Mr. Krakovsky's  
22 declaration is focused more on there is no alternative DIP  
23 financing available, as well as the reasonableness of the fees  
24 and the interest outlined in that.

25 And I can cover that in a moment. But before we do



Colloquy

1 that, I wanted to ask Your Honor to offer into evidence docket  
2 number 16, the Mike Krakovsky declaration. Mr. Krakovsky is  
3 in the Court room available for cross-examination, if anyone  
4 wishes.

5 THE COURT: All right. Does anybody object to taking  
6 Mr. Krakovsky's testimony by declaration or object to the  
7 admission of his declaration?

8 Hearing no objection, it's admitted.

9 (Declaration of Mr. Krakovsky was hereby received  
10 into evidence as Debtors' Exhibit --, as of this date.)

11 MR. SIMON: Okay. And again, Your Honor, what I want  
12 to do here, hopefully, is clarify and simplify. Right. The  
13 debtors' capital structure is actually fairly simple. MidCap,  
14 we refer to them as the pre-petition ABL lender. MidCap has a  
15 first-priority secured position on really the cash and  
16 accounts receivable. Their pre-petition claim is roughly  
17 thirty-three million dollars.

18 Behind MidCap -- well, let me make one statement.  
19 Omega has a second lien on the collateral that MidCap has. So  
20 they have a second lien effectively on the cash and AR. The  
21 collateral that MidCap doesn't have a lien on, the equity in  
22 the borrowers and things like that, Omega actually has a  
23 first, but they basically slot in second on the cash and AR.  
24 And that falls under their term note, which is approximately  
25 twenty-six million dollars as of the petition date. And in



Colloquy

1 addition to that, they have effectively a secured master  
2 lease, where they get second secured position for obligations  
3 owing under the master lease.

4 And so the goal with respect to the DIP is  
5 effectively to slot it between MidCap as the first-priority  
6 secured position on the cash and AR and Omega. Omega  
7 obviously consents to the DIP. They're one of the DIP  
8 lenders.

9 MidCap, what we're doing is effectively keeping  
10 static in time. Rather than continuing borrowings under the  
11 DIP, their balance remains. They would continue to have as  
12 adequate protection a lien on post-petition receivables as  
13 they come in. That's adequate protection to the extent of any  
14 diminution in value. But MidCap is not being primed, and  
15 obviously, that was a very critical piece in the puzzle to  
16 make sure that they were not -- also, they get interest during  
17 the case, but they're effectively maintained as status quo  
18 during the case.

19 THE COURT: Okay. They're owed thirty-three million,  
20 plus or minus?

21 MR. SIMON: Correct. That's correct, Your Honor.

22 THE COURT: And they should get -- as we talked about  
23 earlier, I don't know how many of those old receivables are  
24 still tumbling in, but that might reduce the balance on it.

25 MR. SIMON: It will. It will. It won't reduce it to





Colloquy

1 zero, but some of those receivables will come in. And as part  
2 of the adequate protection, there is a provision regarding the  
3 reconciliation to make sure either it goes to the debtors,  
4 which would pay down the MidCap line, or it's due and owing to  
5 the new operators, in which case the debtors would act as  
6 intermediary --

7 THE COURT: All right.

8 MR. SIMON: -- to transfer those funds that belong to  
9 the new operators.

10 Just as a high-level overview, it's twenty-million-  
11 dollar post-petition junior DIP financing. We're requesting  
12 nine million dollars on an interim basis. Obviously, a  
13 consensual use of cash collateral as it comes in with MidCap  
14 and Omega.

15 It is cosponsored. It's cosponsored by Omega on the  
16 one hand and an entity referred to as TIX 33433, which is  
17 effectively a single-purpose entity for this. We have  
18 disclosed, out of an abundance of caution, that there's some  
19 common beneficial ownership with the entities that are  
20 investors up the chain of the main debtor. But basically,  
21 that's owned by a number of LLCs and individuals and family  
22 trust. And there's some kind of indirect, common beneficial  
23 ownership there.

24 THE COURT: So that's --

25 MR. SIMON: The interest rate --



Colloquy

1 THE COURT: -- some portion of the DIP lender --  
2 okay. Well, one of the two entities is making the DIP loan is  
3 owned by some of the people who own the debtor.

4 MR. SIMON: Ultimately, the --

5 THE COURT: In a very indirect way as to both of  
6 those.

7 MR. SIMON: -- yes, through in an indirect way. I  
8 think that's correct.

9 THE COURT: Okay. And I saw that in I think it's  
10 footnote 36 on that. Yeah.

11 MR. SIMON: Correct. Correct. And we obviously  
12 want to be transparent --

13 THE COURT: Much better that way.

14 MR. SIMON: -- about those issues.

15 The interest rate is ten percent, which in this  
16 market is quite reasonable. The fees are three percent as far  
17 as the commitment fee and three percent for an exit fee. But  
18 all three of those pieces, the interest, the commitment fee,  
19 and the exit fee, they're pay in kind. They're not paid in  
20 cash. And they effectively go on the back-end to add to the  
21 principal balance. So we're not paying DIP interest in cash  
22 to the DIP lenders during the case.

23 THE COURT: Okay.

24 MR. SIMON: There is a five-week budget attached,  
25 which takes us presumably to an interim order. There is a



Colloquy

1 carve-out, a kind of a customary carve-out, which covers not  
2 just the fees of the debtors, but also fees of a committee,  
3 fees of a patient care ombudsman, and any fees owing to the  
4 United States Trustee.

5 THE COURT: Do you have a time or a basis for  
6 advancing nine million, I guess, for the --

7 MR. SIMON: Correct. There's some timing  
8 fluctuations in the budget so that the beginning of the month  
9 is kind of the more -- there's more cash needs when rent has  
10 to go out. And obviously, the payroll and the vendor payments  
11 are a little more static over time. But yes, we project that  
12 nine million would be required.

13 And that leaves some -- I'll call it a liquidity  
14 cushion. In a business of this size, you want to make sure  
15 that you don't run the cash down to zero. And so this kind of  
16 maintains that. Just like when we walked into the case, we  
17 had a very low cash balance, but it wasn't zero. And so we  
18 don't want to kind of trend towards that line.

19 Mr. Jones and his team prepared the budget. It has  
20 been reviewed and approved by both of the DIP lenders. And we  
21 would operate under that budget until the interim period and  
22 then have probably a broader thirteen-week budget associated  
23 with a final order with the committee comes in.

24 THE COURT: Okay.

25 MR. SIMON: Just as far as some of the hot-button



Colloquy

1 issues that can arise under an interim order, for instance,  
2 liens on the proceeds of avoidance actions, 506(c) waiver,  
3 equities of the case under 552, and marshaling waivers, all of  
4 that in the order is subject to entry of a final. So there is  
5 no intent to kind of jam a committee with a DIP order that  
6 doesn't preserve their rights under there.

7           There's also a standard challenge provision with  
8 respect to the debtors' stipulations. We have used the time  
9 periods outlined, I think, in the complex case procedure,  
10 which is seventy-five days after the petition day or sixty  
11 days after a committee is formed. It sounds like Mr. Adams is  
12 working expeditiously to form a committee.

13           The declaration of Mr. Krakovsky indicates that  
14 there's no real collateral, extra collateral to provide.  
15 There's no ability to prime MidCap. Without the consent of  
16 Omega, there wouldn't be inability to prime Omega. So the  
17 ability of the debtors to go get third-party financing that is  
18 junior, certainly, in the time period that we had pre-petition  
19 was not feasible. To the extent it's feasible, obviously,  
20 we'll take any and all offers for DIP financing post-petition,  
21 but it seems like, given the capital structure, it would be  
22 very challenging.

23           THE COURT: Yeah. Okay.

24           MR. SIMON: I guess the last thing I'll say, and I'll  
25 turn it over, whether anyone else wants to speak or whether



Colloquy

1 Your Honor has any questions, is the debtors' business  
2 judgment.

3 We have in Mr. Jones' declaration that he believes,  
4 and he was part of the negotiations, the terms of the  
5 financing are fair and reasonable. They were negotiated at  
6 arm's length and in good faith. They were negotiated right up  
7 until the time it was filed. It was a very extensive, kind of  
8 tri-party negotiation. I take that back. There were at least  
9 five parties as part of that, including MidCap.

10 I will note Mr. Gordon represents Welltower. I don't  
11 want to speak for him. We identify certain secured  
12 interests -- they don't have a security interest in the cash  
13 and AR, but they have certain secured interests under their  
14 leases. The intent is not to prime them. And we've agreed  
15 with language with Mr. Gordon in advance of this hearing, just  
16 a short paragraph, that basically says, to the extent  
17 Welltower has any validly perfected secured liens, the intent  
18 is not to prime them.

19 So with that, Your Honor, that is an overarching  
20 summary of a seventy-page DIP order. I'm obviously happy to  
21 answer any questions or address any issues or else let other  
22 parties speak.

23 We did confer with the Office of the United States  
24 Trustee on this this morning. They had one clarifying issue,  
25 which we clarified, but I'm not aware of any substantive



Colloquy

1 points that they had with respect to the DIP.

2 THE COURT: Okay. Really more of a practical  
3 question than a legal one, which is is twenty million enough?

4 MR. SIMON: The answer is yes. We built out the  
5 budget kind of through the milestones of the case. It's not  
6 going to be enough if this case lingers, as I noted earlier,  
7 but it is enough during that time.

8 And in part, it's because the current facilities are  
9 cash-flow positive, not by a ton and not enough to offset the  
10 process costs of the case and all the rent -- all the full  
11 rent payments. But it's not as these facilities that we  
12 currently have burn a substantial amount of cash, in which  
13 case twenty million dollars wouldn't be near enough.

14 THE COURT: Right, because I asked that question in  
15 part because I noted that in the history that the debtor got  
16 two similarly sized infusions last year. As it's obviously,  
17 here we are so --

18 MR. SIMON: Um-hum.

19 THE COURT: But it was, like, I will grant you, a  
20 larger enterprise, and you have disposed of, at least in your  
21 judgment, the ones that were burning cash. So hopefully what  
22 was not enough in 2023 will turn out to be enough in 2024.

23 MR. SIMON: Right. And again, I think it highlights  
24 the importance of the automatic stay and not -- I mean, those  
25 amounts went to deal with, A, you're correct. It was a much



Colloquy

1 broader enterprise and facilities that burned cash. And B, to  
2 the extent we had a deal with all the other creditors, who are  
3 now pre-petition creditors, a lot of that was eviscerated in  
4 that way. Now, we have the benefit of the automatic stay.  
5 We're moving forward, and so those amounts aren't required in  
6 order to address the debts of the past.

7 THE COURT: Okay. And you've noted the deadline for  
8 the committee to object to liens and such. Has the debtor  
9 done any investigation about the liens of the pre-petition  
10 lenders?

11 MR. SIMON: We did. We ran lien searches. We  
12 analyzed those lien searches. We ran it for a perfection  
13 analysis with respect to Omega and MidCap. The TIX 33433 is  
14 not a pre-petition lender, so they're not implicated in those  
15 releases. So the answer is yes, we have. And we're  
16 comfortable with the stipulations.

17 THE COURT: Okay. And not to prejudice the  
18 committee's ability to go redo your work or check your math,  
19 but I just wanted to make sure that the math had been done on  
20 the first instance.

21 MR. SIMON: And again, with respect to your prior  
22 question about twenty million dollars being enough, I mean, we  
23 went back and forth with Mr. Jones and the budget, and again,  
24 we're comfortable in the time lines that we have. Obviously,  
25 we're always open to more money if the DIP lenders are willing



Colloquy

1 to provide it. But right now, they were able to do it under  
2 the terms and the milestones set forth in the DIP.

3 THE COURT: Okay. All right. Well, that does it for  
4 my questions.

5 So anybody else wish to be heard with regard to the  
6 proposed DIP financing?

7 MR. ADAMS: Your Honor, I'll just go very briefly  
8 because I have very little to say, and then I'll cede the  
9 podium. Jonathan Adams on behalf of the United States  
10 Trustee.

11 As Mr. Simon pointed out, we had just one kind of  
12 procedural issue that we raised with him before, and that was  
13 we wanted to make sure that the budget carved out funding for  
14 the committee and the patient care ombudsman going forward.  
15 We do appreciate the debtor holding off to the final order,  
16 the marshaling provisions and the lien of the avoidance issues  
17 that we talking about, so that the committee can get up to  
18 speed. We appreciate including that, and we appreciate the  
19 simplicity of the terms. Thank you.

20 THE COURT: All right. I see someone arising in the  
21 back of the courtroom. So at least one person online has  
22 turned on the camera. So we might have some more discussion.

23 Yes, sir.

24 MR. GORDON: Good afternoon, Your Honor. David  
25 Gordon with Polsinelli. I represent Welltower NNN Group, LLC,





Colloquy

1 who I'll just refer to as Welltower from now on.

2 THE COURT: Okay.

3 MR. GORDON: Welltower is the landlord for nine of  
4 the forty-three facilities that are still operating.

5 Welltower is the landlord pursuant to a master lease with  
6 those nine debtors. The master lease, my understanding of the  
7 master lease is it grants Welltower a lien on certain personal  
8 property of the debtors. I believe it's just normal personal  
9 property.

10 THE COURT: The stuff that's --

11 MR. GORDON: Yeah.

12 THE COURT: -- in the nine facilities?

13 MR. GORDON: Stuff that's in the facilities. I am  
14 told that our lien does not extend to cash or AR. But I only  
15 got hired yesterday, and so I have not have the chance to  
16 fully investigate that.

17 And the way we've worked it out is exactly as Mr.  
18 Simon just represented to the Court, which is that we just  
19 want some language in the interim order that says, to the  
20 extent Welltower has a lien on something, nothing in this  
21 order primes Welltower or otherwise affects the validity and  
22 priority of the Welltower's liens. And so as long as that's  
23 the interim order, we'll be able to work this out between now  
24 and the final order.

25 THE COURT: Okay.



Colloquy

1 MR. GORDON: So I just wanted to note that for the  
2 record.

3 THE COURT: Very good. All right. I see no one else  
4 in the courtroom who appears to want to speak to this.

5 So anybody online?

6 MS. CONIGLIO: Yes, Your Honor. Kari Coniglio on  
7 behalf of Lument.

8 THE COURT: Okay.

9 MS. CONIGLIO: So Your Honor, just an initial  
10 housekeeping matter. I'm licensed in Ohio. I am not licensed  
11 in Georgia. We found out about this hearing about thirty  
12 minutes before it started. So I've reached out to the local,  
13 but I don't have local yet. And I have yet to file pro hac.  
14 So I would ask if you're okay with me moving orally for pro  
15 hac admission solely for purpose of the stay, make some  
16 limited reservations.

17 THE COURT: Given those circumstances, I'll be happy  
18 to hear from you. Go ahead.

19 MS. CONIGLIO: Okay. Thank you, Your Honor. And  
20 just, and another point of clarification, I was on another  
21 call. I joined late. So my colleague Matt Fazekas did  
22 introduce himself and state his name for the record. He also  
23 has an Ohio license. So I'm asking the same for him as well,  
24 though he will not be speaking any further today.

25 THE COURT: Okay. Yeah, I see his appearance. And I



Colloquy

1 guess we'll note yours.

2 MS. CONIGLIO: Yes. Thank you, Your Honor.

3 Your Honor, since it's high-level, I'm kind of in the  
4 same position as counsel who just spoke. We just got  
5 retained.

6 High-level, what I understand is that my client  
7 Lument Real Estate Capital made loans to three entities, three  
8 borrowers who are not debtors. They leased the facility to a  
9 master tenant, and there's subleases for certain of the  
10 debtors who are operators. And please don't hold me to any of  
11 those. This is just my high-level understanding while we  
12 figure out the facts. And so Your Honor, we've had some  
13 similar cases like this, and I would ask for similar  
14 reservation that Welltower had but just want to make a couple  
15 additional points.

16 Our loans in particular are HUD-insured. And so with  
17 that, there are a lot of regulatory agreements and provisions  
18 in the regulations and in the National Housing Act that apply.  
19 And generally, what we ask is that cash usage just be subject  
20 to the regulatory agreements that are applicable to the  
21 operators. And from all these cases that I've done in the  
22 past, I've never had any conflicts with, in particular, the  
23 emergency use of cash. I think it's always consistent with  
24 this regulatory agreement. So I would ask for something like  
25 that in the initial order.



Colloquy

1           And then finally, I admittedly have not had a chance  
2           to walk through all of the pleadings in detail, and I'm not  
3           sure that the debtor had really been aware of us. So I would  
4           ask if adequate protection that the lease payments to the  
5           master tenant be made so they can continue to be made payments  
6           up to our client as adequate protection.

7           THE COURT: Okay. And did you say who the master  
8           tenant was?

9           MS. CONIGLIO: Your Honor, I actually believe that it  
10          is the consulate. But again, I don't yet have the documents  
11          to confirm that.

12          THE COURT: All right. Well, here's a left-turn for  
13          you to address, but maybe not.

14          MR. SIMON: It is, but I will note that these three  
15          building -- I believe this relates to three buildings. The  
16          buildings are divested. There is no lease payments being  
17          made. I'm not aware of -- I don't want to mispronounce her  
18          name.

19          THE COURT: Coniglio?

20          MR. SIMON: Coniglio.

21          MS. CONIGLIO: Yes, Your Honor. Yeah.

22          THE COURT: I come pretty close.

23          MR. SIMON: I'm not aware of any specifics, but we  
24          can't provide adequate protection to make lease payments on  
25          leases that we don't operate on. So I heard a little bit



Colloquy

1 about regulatory issues. I'm happy to look at language. We  
2 probably need to deal with that in a final order.

3 But I'm not -- because it is one of the things that I  
4 was going to rise for is it's really important that this order  
5 gets entered as soon as possible. I feel it today because  
6 we're opening up a bank account, and we have a funding request  
7 to go out and hopefully get the funds in the morning to make  
8 sure that we get the payroll out and everything else that  
9 we -- I'm happy to work with Ms. Coniglio, but I don't  
10 believe -- set aside whatever regulatory language she refers  
11 to, and I haven't obviously seen it -- we're not going to make  
12 adequate protection payments on lease payments where we don't  
13 operate.

14 The lease payments on the forty-three facilities are  
15 to Omega, to Welltower, to Harts Harbor, who was also  
16 represented today. And there's an Elderberry lease. I don't  
17 believe they have counsel, but we've been in contact with  
18 Elderberry. That makes up forty-three leases that we have  
19 active operations on. And that should be all of the rent that  
20 is paid under the DIP budget. And we shouldn't be paying rent  
21 to divested facilities.

22 THE COURT: Okay. Not quite sure what to do about  
23 that.

24 MS. CONIGLIO: Your Honor, if I could just type in.  
25 Again, recognizing -- again, for the record, it's Kari



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1 Coniglio on behalf of Lument.

2 Recognizing the situation we're in, I don't know  
3 those facts to be true or not with respect to debtors'  
4 counsel. So I'm not challenging them. I just don't know.  
5 But for an interim period of time, I think that this is  
6 something where we could reserve right and potentially reserve  
7 that right for a final hearing while we figure out those  
8 facts.

9 And as far as the regulatory (indiscernible), I'm  
10 happy to provide them with, but I think it's something that  
11 we'll be able to work out very quickly off the record.

12 MR. SIMON: Your Honor, we would be fine to preserve  
13 rights.

14 THE COURT: Okay.

15 MR. SIMON: And ideally, we could preserve rights on  
16 the record, rather than build in a new paragraph in the DIP  
17 order. But I have no problem preserving her client's rights,  
18 and we're happy to work with her between --

19 THE COURT: Right.

20 MR. SIMON: -- interim and final to better understand  
21 her position.

22 THE COURT: All right. Does that work for you, Ms.  
23 Coniglio?

24 MS. CONIGLIO: It does, Your Honor. Yes. Thank you.

25 THE COURT: Okay. Very good.



Colloquy

1 Good we finally had some use for all the folks  
2 online.

3 MR. SIMON: We had to give you a little more  
4 excitement than Mr. Adams rising.

5 THE COURT: And all of his thunder.

6 All right. Anybody else wish to be heard with regard  
7 to the proposed DIP financing?

8 MR. SIMON: Both counsel to the DIP lenders are here,  
9 but I think, seeing that they're not rising, I think we've  
10 covered whatever they would want to cover.

11 THE COURT: I think they're -- maybe they'll be  
12 pleased by the result. But in any event, the Court will  
13 approve the DIP financing on an interim basis, if you'll  
14 present an order.

15 MR. SIMON: We appreciate that very much, Your Honor.  
16 We'll get the outline uploaded. That one is certainly a  
17 priority, along with the employee wage.

18 THE COURT: Okay. I have a couple of housekeeping  
19 things. I'm sure you do too.

20 MR. SIMON: Very well.

21 THE COURT: So I'll let you go first. Maybe you'll  
22 cover all mine.

23 MR. SIMON: One is just to make sure -- I'm going to  
24 look at Ms. Keil. I think we're okay that we'll be uploading  
25 some of the orders. Some are already uploaded, and some will



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1 be uploaded after the hearing.

2 Is that correct?

3 MS. KEIL: It will be uploaded after the hearing.

4 MR. SIMON: Okay. I do want to talk about dates.

5 THE COURT: And well, let me ask --

6 MR. SIMON: I'm sorry.

7 THE COURT: So for in terms of which orders I should  
8 look at first, it sounds like the DIP order I should look at  
9 before everything else or --

10 MR. SIMON: I think that would be preferable. I  
11 believe we'll work to get it -- the only addition to what we  
12 filed is one short paragraph on Welltower. It's not 4  
13 o'clock, so we'll get that uploaded certainly today, as -- I  
14 think we'll have all of them uploaded today. So to the  
15 extent --

16 THE COURT: Okay.

17 MR. SIMON: -- it's ready, we could take -- we can  
18 have it signed today. But first thing in the morning, if not,  
19 would be fine.

20 THE COURT: Okay. We can do either of those things.

21 MR. SIMON: Okay.

22 THE COURT: I don't know. If I got a mediation  
23 tomorrow, maybe. So I'm not sure --

24 MR. SIMON: I don't have a sense, sitting here today,  
25 Which ones have been uploaded and which ones don't, but we'll





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1 get them all uploaded as quickly as we can --

2 THE COURT: Okay. Very good.

3 MR. SIMON: -- to the extent they're not.

4 THE COURT: All right. What were your other  
5 housekeeping things? Oh, well, you want to talk about a  
6 second date?

7 MR. SIMON: Yeah. I think we need a second day  
8 hearing order. The milestones in the DIP provide for thirty-  
9 five days, which unhelpfully takes us to a Sunday, July 7th.  
10 We're trying to avoid -- there's a lot of vacation the week of  
11 July 4th, as you can imagine. So what I think will work for  
12 our side would be a second day hearing either June 27th or  
13 28th so that we can kind of address those issues prior to  
14 people going on vacation for July 4th week.

15 It would be a final hearing on all of the relief  
16 that's subject to final hearing today, including a final DIP  
17 hearing, and the only I think substantive motion that we would  
18 seek to have heard on that day is a bidding procedures motion.  
19 That is obviously not before you today, but it's something  
20 that --

21 THE COURT: It's a milestone (indiscernible).

22 MR. SIMON: It's a milestone, and also we want to  
23 make sure that when the assets are being shopped by Stout,  
24 that they have the backing of a court order authorizing those  
25 bidding procedures. And so that's obviously a very important



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1 component to this. We intend to file that motion hopefully  
2 later this week or no later than early next week.

3 And to the extent that would reduce anyone's  
4 objection deadline below fourteen days, we would add that on  
5 the back-end so there would be enough time and parties would  
6 have sufficient evidence. And obviously, we're happy to work  
7 with the committee once they're formed to make sure that they  
8 get whatever objection deadline extensions they require.

9 THE COURT: Okay. Well, I'm, I think, fully  
10 available both the 27th and the 28th. So if you have a  
11 preference, we can do whichever.

12 MR. SIMON: Would that be in Atlanta, presumably?

13 THE COURT: It will. Yeah, well --

14 MR. SIMON: Okay.

15 THE COURT: -- if they haven't fixed the water  
16 problems by them, we --

17 MR. SIMON: Okay.

18 THE COURT: -- serious problems then. So yes.

19 MR. SIMON: I have no -- I have no preference between  
20 those two dates. But why don't we go --

21 THE COURT: Why don't we do the 27th, just so --

22 MR. SIMON: Perfect.

23 THE COURT: -- for some reason it takes longer, we  
24 got the 28th to work with.

25 MR. SIMON: Perfect. I think, in addition, we can --



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1 I don't know how Your Honor operates, whether we go through  
2 chambers to set additional dates, but it may make sense to set  
3 a date about two weeks later than that. We'll have retention  
4 apps. We'll have some other things filed. And I just want to  
5 make sure that, looking ahead, that we'll have availability on  
6 Your Honor's --

7 THE COURT: Okay. Sure.

8 MR. SIMON: -- on Your Honor's calendar.

9 THE COURT: So the complex case procedures  
10 contemplate omnibus hearing dates.

11 MR. SIMON: Um-hum.

12 THE COURT: Do we want to set some of -- like, the  
13 normal idea, I guess, is that they're periodic, so --

14 MR. SIMON: Right.

15 THE COURT: -- every Wednesday it's -- or every third  
16 Wednesday or whatever. But we can set individual dates if  
17 that --

18 MR. SIMON: I think the interest --

19 THE COURT: -- works better.

20 MR. SIMON: Yes, we do want to do that.

21 THE COURT: Okay.

22 MR. SIMON: Of all of the things happening over the  
23 last few days, I haven't conferred with the other parties.  
24 Why don't we do that.

25 THE COURT: Okay. And --



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1 MR. SIMON: Confer with them --

2 THE COURT: Yeah.

3 MR. SIMON: -- as to what would be appropriate for  
4 omnibus. But I think it makes sense in this case, whether  
5 it's twice a month or once a month, just to have something on  
6 the calendar and schedule other special settings around that  
7 if we need. But if it's all right, we'll contact chambers --

8 THE COURT: That'd be fine.

9 MR. SIMON: -- with a proposal on that.

10 THE COURT: Okay. Well, we can work with whatever  
11 works for you so --

12 MR. SIMON: Okay.

13 THE COURT: Let's see here. So we talked about a  
14 patient care ombudsman. While I was in that neighborhood, I  
15 also noticed Section 332, which deals with consumer privacy.  
16 Does that have any play in this case because I think that's  
17 another ombudsperson --

18 MR. SIMON: Yeah --

19 THE COURT: -- for lack of a better term.

20 MR. SIMON: -- I don't believe so. I can go back and  
21 revisit it and maybe speak with Mr. Adams. That often happens  
22 where a lot of consumer data is being used. I don't think  
23 that's the case here. I think we're covered by -- I'm being  
24 corrected. Oh no, I'm being --

25 THE COURT: You're being affirmed, I believe.



Colloquy

1 MR. SIMON: Yeah, yeah, yeah.

2 THE COURT: It seems like.

3 MR. SIMON: Okay.

4 MR. HAAKE: Typically, Your Honor, it's required  
5 where you're selling the information. But when you have a  
6 transaction where everything is going together --

7 THE COURT: Right.

8 MR. HAAKE: -- then it's not at issue, typically,  
9 unless there's something specific in the privacy bylaws.

10 THE COURT: I know what I want to remember. I  
11 thought because I think it just, it's just prefaced by if  
12 you're filing a motion under 363(b), the court shall  
13 something, which --

14 MR. SIMON: We'll take a closer look and discuss.

15 THE COURT: Yeah. When the statute tells me I shall  
16 do something, I have to think about that.

17 MR. SIMON: And you know when the U.S. Trustee pulls  
18 out the Bankruptcy Code, they have to think about those things  
19 so --

20 THE COURT: Anyway, I don't mean to make anybody make  
21 any decisions about that today, but do keep that --

22 MR. SIMON: Your Honor, just one clarifying point.  
23 We did set June 27th. We'll add that in to all of the orders.

24 Should we pick a time as well?

25 THE COURT: 9:30 work okay?



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1 MR. SIMON: Certainly.

2 THE COURT: Okay.

3 MR. SIMON: As long as it's in Atlanta, yes.

4 THE COURT: Yeah. You don't want to --

5 THE CLERK: And Your Honor, will it be another hybrid  
6 hearing?

7 THE COURT: Yeah, why not.

8 MR. SIMON: I think the key parties will probably be  
9 in person.

10 THE COURT: Right. Well, not to say that all the  
11 people online are not key parties.

12 MR. SIMON: Correct. I stand correct.

13 THE COURT: We love them all very much but --

14 MR. SIMON: I stand corrected, Your Honor. One of  
15 the -- one of the other -- we talked about bidding procedures.  
16 We talked about obviously we'll be filing retention papers.

17 We did note -- you may have seen in a footnote in the  
18 first day declaration -- we're going to confer with the  
19 plaintiffs' attorney of the lawsuit that you addressed  
20 earlier.

21 THE COURT: Right. I saw something about an  
22 adversary proceeding.

23 MR. SIMON: It may be that we would seek to extend  
24 stay. And our research in this, in some instances, it can be  
25 done by a motion. It appears that the Eleventh Circuit, it's



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1 often most often done through adversary proceeding. And so to  
2 the extent we can't reach an arrangement with them, we would  
3 likely file that and seek extension of the stay under 105 in  
4 that action.

5 THE COURT: All right. Well, we'll be on the lookout  
6 for it to the extent it's necessary.

7 MR. SIMON: Those are, I believe, all the  
8 housekeeping matters I have. Let me just confer on our end.  
9 I don't know if Your Honor has additional ones.

10 THE COURT: I don't want to -- I hid all of mine.  
11 Yeah. Ms. Roshad (ph.), have I forgotten anything?

12 THE CLERK: I think we're wonderful, Your Honor.

13 THE COURT: Okay. Great. All right. Well, been a  
14 pleasure seeing you all. It's always nice to see people in  
15 person. And look forward to seeing you all again end of June,  
16 if not before.

17 MR. SIMON: Your Honor, we look forward to it, and we  
18 appreciate all your time of you and your staff today to  
19 accommodate us. Thank you.

20 THE COURT: It's our pleasure. It's what we're here  
21 for.

22 THE CLERK: All rise.

23 (Whereupon these proceedings were concluded at 4:04 PM)

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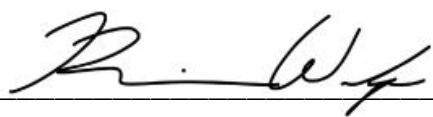
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C E R T I F I C A T I O N

I, River Wolfe, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

 June 6, 2024

RIVER WOLFE

DATE

TTA-Certified Digital Legal Transcriber CDLT-265

