

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	
)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> ¹)	Case No. 24-55507 (PMB)
Debtors.)	(Jointly Administered)
)	Related to Docket Nos. 8, 10, 11, 14, 45, 47, 48, and 50

OMNIBUS RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO CERTAIN OF THE DEBTORS’ FIRST DAY MOTIONS

The Official Committee Unsecured Creditors (the “Committee”), by and through its undersigned proposed counsel, hereby responds (this “Response”) to the: (a) *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Continue Resident Programs and Honor Prepetition Obligations Related Thereto, and (II) Granting Related Relief* [Docket No. 8] (the “Resident Programs Motion”); (b) *Emergency Motion for Entry of Interim and Final Orders Authorizing Debtors to (I) Maintain Existing Insurance Policies and Surety Bonds and Pay All Obligations Arising Thereunder; (II) Renew, Revise, Extend, Supplement, Change, or Enter into New Insurance Policies and Surety Bonds; and (III) Granting Related Relief* [Docket No 10] (the “Insurance Motion”); (c) *Debtors’ Emergency*

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.



Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes, Fees, and Related Obligations and (II) Granting Related Relief [Docket No. 11] (the “Tax Motion”); and (d) *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Existing Cash Management System, (B) Maintain Existing Bank Accounts and Business Forms and Honor Certain Prepetition Obligations Related to the Use Thereof, (C) Maintain Purchasing Card Program and Honor Prepetition Obligations Related Thereto, and (D) Continue to Perform Intercompany Transactions; (II) Extending the Time for the Debtors to Comply with 11 U.S.C. § 345(b) Deposit and Investment Requirements; and (III) Granting Related Relief* [Docket No. 14] (the “Cash Management Motion” and, together with the Resident Programs Motion, the Insurance Motion, and the Tax Motion, the “Certain First Day Motions”). In further support of this Response, the Committee respectfully states as follows:

INTRODUCTION

The LaVie organization currently consists of more than 200 separate Debtors operating within a complex interdependent corporate structure which includes lessors, lessees, operators, management companies and many closed and operating senior nursing and assisted living facilities. Unofficially, unsecured debt is reported to be nearly \$500 million. The Official Committee of Unsecured Creditors, which has only recently been appointed, seeks to maintain the health, safety and welfare of current residents while preserving assets and claims which could lead to a recovery for its constituency. To do so, the Committee believes that while a sale may be the only reasonable outcome, it should not be undertaken along with the approval of Debtor-in-Possession financing in a manner which effectively and unreasonably puts claims and assets out

of the reach of creditors. Moreover, until the Committee has had a fulsome opportunity to determine how such a massive debt load arose and what claims and causes of action might arise as a result, preservation of the independence of each Debtor as well as any causes of action or claims must be in the forefront of any decisions made in the short term.

BACKGROUND

1. On June 2 and June 3, 2024 (the “Petition Dates”), LaVie Care Centers, LLC and more than 200 of its affiliates and subsidiaries (collectively, the “Debtors”) each filed a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”).

2. On June 3, 2024, the Debtors filed their “first day” motions, including each of the Certain First Day Motions, as well as the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 17] (the “First Day Declaration”).²

3. As is more fully explained in the First Day Declaration, the Debtors have recently transferred operations at over 90 Facilities reportedly to stabilize their financial condition. Thus, only a subset of the Debtors are currently involved with the leasing, sublease, management, and/or operation of active Facilities (such Debtors, including the Active Tenant Debtors, the Operating Debtors, the Management Debtors, and the Active Facility Debtors, the “OpCo Debtors” or “Operating Debtors”). The other Debtors are not involved in current operations, but rather, were previously involved with the leasing, sublease, management, and/or operation of Facilities which

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the First Day Declaration.

the Debtors have since divested (such Debtors, including the Inactive Tenant Debtors, Prior Operating Debtors, Inactive Management Debtors, and Divested Facility Debtors, the “DivestCo Debtors” or “Non-Operating Debtors”). The Non-Operating Debtors, upon information and belief, do not contribute to the Debtors’ ongoing operations.

4. Further, the Debtors contract with Synergy (comprised of two non-Debtor affiliates) for “ongoing support and administrative services, including billing and collecting, cost reports, legal services, and other services.” First Day Declaration at ¶ 29. Relevant to the Response, only days before the Petition Dates, on May 31, 2024, Debtor LaVie Centers, LLC (“LaVie”) and a Synergy entity entered into an Administrative Transition Services Agreement (the “TSA”). Under the TSA, LaVie contracted with Synergy to provide various services for certain Non-Operating Debtors (*e.g.* accounting, tax, cash management, IT, insurance, legal, billing and collection services) for an initial term of 6 months, extendable on a month-to-month basis. The TSA does not specify how many or which Facilities it is intended to cover. In exchange for these services, LaVie is obligated to pay the following under a monthly payment schedule: June and July each \$254,100, August \$223,800, September \$194,800, October \$191,300, and November \$142,800, for a total of \$1,260,900 for the initial 6-month term. The Debtors have not filed a motion to assume the TSA but the parties are continuing to perform their ongoing obligations.

5. On June 5, 2024, the Court entered interim orders granting the Tax Motion [Docket No. 45] (the “Interim Tax Order”), the Insurance Motion [Docket No. 47] (the “Interim Insurance Order”), the Cash Management Motion [Docket No. 48] (the “Interim Cash Management Order”), and the Resident Programs Motion [Docket No. 50] (the “Interim Resident Programs Order” and together with the interim Tax Order, the Interim Insurance Order, and the Interim Cash

Management Order, the “Interim Orders”). A hearing to consider the entry of final orders granting each of the Certain First Day Motions is scheduled for June 27, 2024 (the “Second Day Hearing”).

6. On June 13, 2024, the United States Trustee appointed the Committee (*see* Docket No. 112) and on June 14, 2024 the Committee selected Troutman Pepper Hamilton Sanders LLP to serve as proposed counsel.

RESPONSE

7. While the Committee understands that certain relief sought in the Certain First Day Motions may well be vital to preserving the value of the estates insofar as those motions seek authority to pay very limited pre-petition amounts with respect to the Operating Debtors, the Committee does not understand why emergency relief is necessary with respect to the Non-Operating Debtors. The Committee and its professionals are in the early stages of analyzing the corporate, financial, and operational information for nearly 300 Debtors and therefore requests that the Court continue the Certain First Day Motions to a date that is at least an additional 14 days from the currently scheduled Second Day Hearing (the “Continued Hearing”), in order for the Committee to better analyze which relief sought in those motions might be appropriate under the circumstances. Without such analysis, the relief granted in the Certain First Day Motions could lead to an inequitable situation where the Operating Debtors are effectively (and possibly unnecessarily) funding the Non-Operating Debtors, to the detriment of the Operating Debtors’ creditors. Accordingly, the Committee also asks that the Court order the Debtors to cease any distributions being made on account of Non-Operating Debtor obligations until after the proposed Continued Hearing, notwithstanding the authority granted in the Interim Orders.

8. While the Committee generally objects to the payment of the pre-petition obligations of the Non-Operating Debtors at this time—and contends that such obligations can be asserted as claims in the Chapter 11 Cases and paid pursuant to a confirmed plan—the Committee specifically highlights the items below as particularly problematic, including in some instances, with respect to both Non-Operating and Operating Debtors.³

9. With respect to the Resident Programs Motion, the Debtors contend that they owe \$2.4 million to CMS with respect to Cost Reports (as defined in the Resident Programs Motions) for 2023 (with \$2.1 million due in the first 30 days of the Chapter 11 Cases). Of that amount \$1.5 million apparently relates to the Non-Operating Debtors with \$1.4 million of that to be paid within the first 30 days. At a minimum, any amount due for a Cost Report to CMS from a Non-Operating Debtor should be asserted as a claim in the Chapter 11 Cases and should not be paid now and all amounts that may be due to CMS need to be scrutinized carefully before payment is made to preserve estate cash.⁴

10. Similarly, the Debtors do not adequately break out which of the Taxes and Fees (each as defined in the Tax Motion) are attributable to the Non-Operating Debtors and which are required to be paid on an emergency basis for the Operating Debtors. For example, the Non-Operating Debtors are reportedly seeking authorization to pay approximately \$200,000 in franchise fees and another \$500,000 in property taxes. The Committee questions whether such

³ The Committee reserves all rights to contest any other relief sought in the Certain First Day Motions not specifically detailed herein.

⁴ Further, to the extent CMS attempts to recoup amounts due for Cost Reports (to the extent the Non-Operating Debtors even had accounts due from CMS), the Committee may well challenge whether CMS has a right to do so and whether such action violates the automatic stay.

amount must be paid on an emergency basis, when available cash in the Debtors' budget is especially tight, or whether the estates would be better served by having these amounts paid under a confirmed plan, provided the sale of the Debtors' assets creates greater liquidity.

11. As with the Cost Report amounts and Taxes and Fees, in the Insurance Motion it remains somewhat unclear which Insurance Policies and Insurance Obligations (each as defined in the Insurance Motion) are tied to Operating Debtors and which, if any, are tied to Non-Operating Debtors. Given that the Non-Operating Debtors no longer operate, a better understanding is needed as to why pre-petition Insurance Obligations with respect to the Non-Operating Debtors must be paid now. Further, it is imperative that the Operating Debtors only pay their proportional share of the Insurance Obligations, as it would be inequitable for the Operating Debtors to be funding the expenses of the Non-Operating Debtors.

12. The Cash Management Motion involves hundreds of accounts and presents an issue that ties together the Committee's concerns with the other Certain First Day Motions—Intercompany Transactions. While the Debtors report that they monitor and track all Intercompany Transactions, there are not sufficient assurances in the Cash Management Motion that the Operating Debtors are protected from being drained of cash to pay Non-Operating Debtor obligations and, indeed, given the relief sought in the Certain First Day Motions, it seems clear that the Debtors may use Intercompany Transactions to do just that. To protect the interests of the Operating Debtors' creditors, this should not be permitted. The Committee and its professionals need further time, especially considering the size of the Debtors' byzantine Cash Management System, to analyze cash flow among Debtors, ensure there are no inappropriate Intercompany Transactions, and generally obtain a firmer understanding of the Cash Management System itself.

13. Finally, while not specifically addressed in any of the Certain First Day Motions, the Debtors' obligations under the TSA are significant. In just the first three months of these cases, the Debtors will incur approximately \$1.2 million in administrative services fees for entirely non-operating facilities. The Committee cannot understand why such services come at such a premium or how they benefit the estate and the Debtors' creditors. Further information is needed regarding the TSA, before the Debtors continue to bleed further cash for potentially needless services.

14. A common theme running through the above issues is that the Committee, while working diligently, is still gathering sufficient information to respond to certain relief the Debtors are seeking. The Committee does not know (and, indeed, could not know under the time constraints) the degree to which the Certain First Day Motions inappropriately seek to make payments on account of Non-Operating Debtors or whether the Debtors have a compelling justification for paying pre-petition obligations of Debtors. Additionally, even with respect to the Operating Debtors, the Certain First Day Motions do not provide a compelling basis at this time to pay CMS on account of Cost Reports related to Non-Operating Debtors—divesting the estates of millions of dollars at a time when cash is critical—rather than paying such amounts under a confirmed plan after the proceeds from the sale of the Debtors' assets hopefully provides more liquidity. The same is true with respect to the TSA—the Debtors appear poised to spend over \$1.2 million on administrative services for wholly defunct Facilities. Relatedly, the further diligence related to the Debtors' Cash Management System is necessary to ensure that Intercompany Transactions are not inappropriately draining the Operating Debtors of much-needed cash to pay unnecessary Non-Operating Debtor expenses. Accordingly, the Committee respectfully requests that the Court continue the hearing on the entry of final orders granting the Certain First Day

Motions to give the Committee and the Debtors time to work through the issues described in this Response. Likewise, in order to ensure that the value of the estates is properly being preserved and that the Debtors' limited resources are being utilized for expenses actually necessary for the safety, health, and welfare of the Residents, the Committee respectfully requests that the Court order the Debtors to cease: (i) any payments on account of pre-petition Non-Operating Debtor obligations; (ii) amounts on account of Cost Reports; and (iii) amounts due under the TSA, notwithstanding any authority granted in the Interim Orders, until after the Continued Hearing.

CONCLUSION

WHEREFORE, the Committee respectfully requests that this Court continue the hearings on the Certain First Day Motions and order the Debtors to cease: (i) any payments on account of pre-petition Non-Operating Debtor obligations, including Cost Reports; (ii) amounts due for insurance premiums for Non-Operating Debtors; and (iii) amounts under the TSA, notwithstanding any authority granted in the Interim Orders, until after the Continued Hearing.

[Signature Page Follows]

Dated: June 24, 2024

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*Proposed Counsel for the Official Committee of
Unsecured Creditors*

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2024, all ECF participants registered in this case were served electronically with the *Omnibus Response of The Official Committee of Unsecured Creditors to Certain of The Debtors' First Day Motions* (the "Response") through the Court's ECF system at their respective email addresses registered with the Court.

I further certify that on June 24, 2024, I caused a true and correct copy of the Response to be served by e-mail on the following entity:

LaVie Care Centers, LLC
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Attn: M. Benjamin Jones
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I further certify that on June 24, 2024, I caused a true and correct copy of the Response to be served by first class mail and Federal Express (next day delivery) to the following entities:

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