

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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 No. 15, 131 & 164

**DIP LENDERS’ JOINDER TO DEBTORS’ OMNIBUS REPLY TO THE
COMMITTEE’S FIRST-DAY OBJECTIONS**

OHI DIP Lender, LLC (“Omega”) and TIX 33433 LLC (“TIX” and together with Omega, the “DIP Lenders”) submits this joinder (the “Joinder”) to the *Debtors’ Omnibus Reply to the Committee’s First-Day Objections* [Docket No. 164] (the “Debtors’ Reply”) in response to the Objection² of the Official Committee of Unsecured Creditors (the “Committee”) to the Motion.³ The DIP Lenders hereby join in the legal arguments set forth in the Motion and the Debtors’ Reply and incorporate the arguments as though set forth herein, and in support thereof respectfully state as follows:

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, for which the Debtors have requested joint administration. 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’ proposed 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.

² The “Objection” is the *Objection of the Official Committee of Unsecured Creditors to the Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 131].

³ The “Motion” is *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 15]. Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.



JOINDER⁴

1. The Committee does not challenge the following undisputed facts: (i) the DIP Facility is the product of arms' length, good faith negotiations among the Debtors and the DIP Lenders;⁵ (ii) the DIP Facility constitutes the best and only postpetition financing option available to the Debtors;⁶ and (iii) the DIP Facility will provide the Debtors with desperately needed financing on reasonable and market terms to ensure the safekeeping of the Debtors' residents and continued employment of the Debtors' employees charged with caring for such residents.⁷ Thus, rather than demonstrating the existence of viable alternate financing or providing financing themselves – something that the DIP Lenders would welcome – the Committee makes unsubstantiated accusations that disparage the DIP Lenders' motivations in these chapter 11 cases without *any* factual basis.⁸

2. In fact, the record contains many concessions by the DIP Lenders both prior to and following entry of the Interim DIP Order that have benefited both the Debtors and the Committee.⁹ Further, the Committee's bald allegations that Omega improperly "leveraged" the Debtors by

⁴ This Joinder is submitted to highlight certain arguments for the Court and will not reiterate each of the arguments set forth in the Motion and the Debtors' Reply (though such arguments are incorporated by reference herein).

⁵ Krakovsky Decl. at ¶¶ 12–14. The "Krakovsky Declaration" is *Declaration of Michael Krakovsky in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 16].

⁶ Krakovsky Decl. at ¶ 13.

⁷ Indeed, the Objection concedes that "[t]he Committee acknowledges the realities of the Debtors' situation and that they likely require some DIP financing if they are to continue operating in chapter 11." Obj., ¶ 4. And the Committee recognizes that all creditors would benefit from a sale of the Debtors' assets. Obj. at ¶ 37.

⁸ See Obj. ¶ 1 ("Omega appears to have used its leverage over the Debtors to sever the properties from the master leases and to cause the Debtors to turn over the entirety of the businesses operated on those properties, including licenses and certificates of need, to Omega's new operators, while leaving all residual liabilities with the Debtors.")

⁹ Jones Decl. at ¶ 78. The "Jones Declaration" is *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 17].

stripping them of value is complete fiction as it is contrary to evidence of record, which establishes that:

- The Debtors' sought chapter 11 protection after incurring in 2022 and 2023 over \$133 in EBITDA losses due to increased costs, staffing shortages and other pandemic-related shocks to the skilled nursing industry.¹⁰
- For months prior to the Petition Date, the Debtors remained focused upon implementing an out-of-court solution that would prevent the need for a chapter 11 filing and worked closely with their existing creditors and landlords, including Omega, to (i) evaluate the viability of the Debtors' lease portfolio and (ii) agree upon the terms of substantial discounts and payments over time.¹¹
- In connection with these out of court restructuring efforts, the Debtors were able to "right-size" their portfolio of Facilities by divesting from negative cash flow facilities.¹²
- Omega's concessions of allowing the Debtors to shed unprofitable facilities provided the Debtors with much needed liquidity, but were ultimately insufficient to stave off the filing of these chapter 11 cases, particularly caused by the (i) newly commenced litigation by the Healthcare Negligence Settlement Recovery Corp, and (ii) unwillingness of other creditors, *principally comprised*

¹⁰ Jones Decl. at ¶ 10.

¹¹ Jones Declaration ¶ 14.

¹² Jones Declaration ¶¶ 16 & 74.

of litigation plaintiffs and staffing agencies who now serve on the Committee,
to agree upon the terms of a global out of court solution.¹³

3. Likewise, the Committee’s assertion that the grant of superpriority claims and liens to the DIP Lenders against the proceeds of avoidance actions constitutes an improper release is misleading. Under the terms of the Final Order, the DIP Lenders’ recourse to such claims and liens as a source of recovery is limited to the claims in respect of *new money financing* only.¹⁴ Thus, unsecured creditors are entitled to all recoveries after repayment of monies funded under the DIP financing (projected to be \$20 million), including any avoidance actions against prepetition secured lenders, and no such claims are being “released” as the Committee will be able to carry out a full and thorough investigation.¹⁵ The DIP Facility is the product of a much needed, comprehensive bargain struck among the Debtors, the DIP Lenders and the Prepetition Secured Parties, and provides the Committee with ample time and resources to investigate and carry out its mandate.

4. In sum, the Committee’s bald allegations in the Objection are unsupported by the undisputed facts. The DIP Lenders are the only parties willing to provide the Debtors with any

¹³ Jones Declaration ¶ 14.

¹⁴ See Final Order definition of “DIP Priority Collateral” includes “all proceeds of the *DIP Loan Parties*’ respective claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (the “Avoidance Actions”).”

¹⁵ Moreover, it is not unreasonable for lenders to insist on incremental collateral to support incremental financing, and because substantially all of the Debtors’ assets are encumbered by the Prepetition Liens, and the only “incremental collateral” recovery for the DIP Lenders are proceeds of Avoidance Actions and other litigation claims that were not subject to the Prepetition Liens. And courts in this district [and others] commonly grant liens on such avoidance actions. See e.g., *In re Envistacom, LLC*, Case No. 23-52696 (Judge Cavender), Docket No. 127 (granting superpriority claim against avoidance action proceeds to prepetition lender as adequate protection for use of lender’s cash collateral); *In re Jack Cooper Ventures, Inc., et al.*, Case No. 19-62393 (Judge Bonapfel), Docket No. 279 (granting to DIP lender liens against, and superpriority claims in, avoidance action claims and proceeds to secure DIP loans, as well as granting to prepetition lender superpriority claims against avoidance action proceeds as adequate protection); *In re Beaulieu Group, LLC, et al.*, Case No. 17-41677 (Judge Diehl), Docket No. 247 (granting superpriority claims against avoidance action proceeds to DIP lenders).

postpetition financing. The DIP Lenders' motives for providing such subordinated financing are simple and responsible: to facilitate an efficient and value maximizing transaction which includes the timely transition of leases to solvent and experienced healthcare providers who can ensure the continued safety and well-being of the residents in the Debtors' facilities, and the continued employment of the thousands of Debtors' facility-level employees.

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WHEREFORE, for the reasons set forth in the Motion, the Debtors' Reply and herein, DIP Lenders respectfully request entry of the Final Order.

This 26th day of June, 2024.

SCROGGINS & WILLIAMSON, P.C.

By: /s/ Matthew W. Levin

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing **DIP Lenders' Joinder to Debtors' Omnibus Reply to the Committee's First-Day Objections** using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to all parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program.

This 26th day of June, 2024.

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