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

In Re: .
LAVIE CARE CENTERS, LLC, et al., . Docket No. 24-55507-pmb
Debtors. .
. Atlanta, GA
. June 4, 2024
11:47 AM

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

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1 Specially Set Hybrid Hearing

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Colloquy

1 THE CLERK: The court will come to order.

2 THE COURT: Please be seated.

3 THE CLERK: Good morning, Your Honor. Today is June
4 27th, 2024. The time is now 11:47 a.m. We are here for the
5 specially set hybrid hearing for consolidated case 24-55507,
6 LaVie Care Centers, LLC, et al.

7 There are eleven matters on this morning's calendar.
8 The first is the consolidated creditor motion at docket number
9 4. The second is the resident confidentiality motion at
10 docket number 7. The next is the resident programs motion at
11 docket number 8. The next is the resident care vendor motion
12 at docket number 9. The next is the insurance motion at
13 docket number 10. Next is the taxes motion at docket number
14 11. Next is the utilities motion at docket number 12. Next
15 is the wages and benefits motion at docket number 13. Next is
16 the cash management motion at docket number 14. The next is
17 the DIP motion at docket number 15. And last is the bid
18 procedures motion at docket number 104.

19 The Court is aware of the amended agenda submitted by
20 debtors' counsel at docket number 167. However, given the
21 lengthy discussion period this morning between counsel, we
22 expect the agenda for today may have changed. Please inform
23 the Court how you would like to proceed.

24 MR. SIMON: Good morning, Your Honor, if it's still
25 morning.



Colloquy

1 THE COURT: Just barely.

2 MR. SIMON: Barely. Dan Simon, McDermott Will &
3 Emery, on behalf of the debtors. We appreciate very much the
4 time that you provided us this morning. The last two hours,
5 we have put to very good use. And I'll kind of walk through
6 the agenda and provide an update for the Court, particularly
7 on the three contested motions.

8 I do believe at this point that we have reached
9 consensus. And we were expecting a contested hearing, and I
10 believe we have consensus and peace has broken out. So we
11 will have those updates for you as well.

12 THE COURT: That's a very productive use of two
13 hours.

14 MR. SIMON: It is, Your Honor, and we appreciate your
15 flexibility.

16 Just by way of introduction, at counsel table today,
17 I have Mr. Jack Hakke. He was in Newnan with us a few weeks
18 ago. Mr. Jake Jumbeck was not. Emily Keil is on the phone.
19 She was with us at the first day hearing. In addition, we
20 have the debtors' chief restructuring officer, Mr. Benjamin
21 Jones. And we also have today the debtors' sole independent
22 manager, Mr. Jim Decker, right here.

23 With those introductions, if it's all right with Your
24 Honor, I'll just kind of walk through where we're at on the
25 amended agenda and identify the kind of where we made



Colloquy

1 progress.

2 THE COURT: That would be great.

3 MR. SIMON: Great. So amended agenda was filed last
4 night, docket 167. There were eleven items up on the agenda.
5 We really broke them down into three categories.

6 I'll start with the easiest, which are there were
7 five motions, all of which were first day motions, where we
8 have either received no objection or otherwise we received
9 sign off from all of the parties, including the official
10 committee of unsecured creditors, as well as the Office of the
11 United States Trustee. Those five motions are the
12 consolidated creditor motion, the resident confidentiality
13 motion, the resident care vendor motion, or what we termed, I
14 think last time, the limited critical vendor motion, the
15 utilities motion, and the wages and benefits motion.

16 And so the intent was that we reached agreement on
17 those, and we uploaded those orders for Your Honor. One I
18 want to point out specifically with actually substantive
19 modifications. That is the consolidated creditor matrix or
20 the consolidated creditor motion. There was a significant
21 issue outstanding at the first day hearing. That was with
22 respect to the filing of monthly operating reports in this
23 case.

24 THE COURT: Right. I saw you got 7/1/2024 that down
25 to three.



Colloquy

1 MR. SIMON: Correct, Your Honor. Up until about
2 forty-eight hours before we thought that would be a contested
3 issue as well, we worked very closely with Mr. Adams and the
4 Office of the United States Trustee. I think all the parties
5 recognized that there was a potential significant
6 administrative issue in doing 282.

7 And so you're correct. There will be three
8 consolidated versions, one for the operating debtors, which is
9 roughly forty-three debtors, one for divested facilities but
10 still some activity, which is approximately ninety-seven
11 debtors, and the rest likely have no cash activity. Those
12 will all be filed in the main case.

13 And I'll just note for the record that we are very
14 appreciative of the flexibility afforded with Mr. Adams and
15 the United States Trustee, and we believe that this is a very
16 workable solution that benefits all parties.

17 THE COURT: That's very good.

18 MR. SIMON: And with that, with those five, unless
19 Your Honor would have any questions, there were no additional
20 issues from the committee or any other party.

21 THE COURT: All right. Are there any objection to
22 entry of the order as proposed in those matters?

23 MS. LAWALL: Not from the committee, Your Honor.

24 THE COURT: Very good. Anyone either in the
25 courtroom or online? Okay.



Colloquy

1 MR. ADAMS: Just for the record, Jonathan Adams on
2 behalf of the United States Trustee. I echo the sentiments
3 expressed by various counsel. We appreciate them working with
4 us on the operating reports issue. Do still have a few
5 supplementary issues as to what will be attached to those
6 operating reports that we're going to work out in the next few
7 weeks, but we are confident we've reached a good agreement
8 that will help all parties decipher the financial information
9 in the case.

10 THE COURT: All right. Hearing no objection and
11 nothing but hurrahs so far, if you'll present the orders on
12 those five matters, we'll get them entered.

13 MR. SIMON: Thank you, Your Honor.

14 The next group of motions would be there was a
15 response or an objection from the official committee of
16 unsecured creditors with respect to four first day motions.
17 There was the tax motion, the cash management motion, the
18 insurance motion, and the resident programs motion. And there
19 was a request by the committee to adjourn those motions for a
20 period of two weeks while we continue to collaborate with them
21 and provide them additional information. The Ankura team has
22 had a number of discussions with their financial adviser, FTI,
23 and they asked us to continue that.

24 The debtors agreed to continue three of the four.
25 That would be the tax motion, the cash management motion, and



Colloquy

1 the insurance motion. And the agreed upon date for that
2 adjournment is the next omnibus hearing, which is scheduled
3 for July 10th. The debtors are committed to working
4 collaboratively with the committee to give them comfort on
5 those issues, but we'll put that back on the calendar with
6 Your Honor's permission for July 10th. We may reach agreement
7 before then, and we can inform Your Honor. Otherwise, we'll
8 proceed with those on July 10th.

9 THE COURT: Okay. Let's say with regard to the -- so
10 we're going to be setting those matters to July 10th?

11 MR. SIMON: Correct, Your Honor.

12 THE COURT: Anybody present have any concern or
13 objection with resetting the matters to July 10th?

14 MS. LAWALL: Nothing from the committee, Your Honor.
15 And I apologize. I haven't introduced myself. Fran Lawall,
16 proposed counsel for Troutman on behalf of the committee,
17 along with Deborah Kovsky and Matt Brooks.

18 THE COURT: Very good. Hearing no objection to the
19 reset, we'll reset those to the omnibus hearing on July 10th.

20 MR. SIMON: Thank you, Your Honor.

21 THE CLERK: And Your Honor, just for the record,
22 that'll be on July 10th, 2024 at 9:30 a.m., and it will be a
23 hybrid hearing with the in-person parties joining us in
24 courtroom 1202, Atlanta.

25 THE COURT: Very good.



Colloquy

1 MR. SIMON: Thank you. That brings us to what was
2 going to be or take up the bulk of the morning and appeared to
3 be contested matters at about 9 a.m. And here we are at about
4 noon, and we have resolution to those. These are the DIP
5 motion, the bid procedures motion, and the resident programs
6 motion. If you recall, the resident programs motion was the
7 fourth motion that the committee sought an adjournment on, and
8 the debtors believed it prudent to proceed with that today,
9 notwithstanding that objection.

10 In support of those motions, we did have -- we do
11 have two witnesses that were identified on our witness and
12 exhibit list, Mr. Benjamin Jones, the debtors' chief
13 restructuring officer, Mr. Mike Krakovsky with Stout, the
14 debtors' proposed investment banker. We do have two
15 declarations that were submitted into evidence as part of the
16 first day hearing. We were planning to submit those into
17 evidence today. We would still submit them into evidence. It
18 was going to be followed by a supplemental direct by Mr.
19 Jones, but hopefully, with the resolutions at issue, we can
20 rest on the declaration.

21 So we did have consent from the committee in advance
22 of today that Mr. Krakovsky could attend virtually. He is on
23 the phone. We would ask the Court for the evidentiary basis
24 for the DIP, the bid procedures, and the resident programs
25 motion to enter into evidence. It's docket 16, which is Mike



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1 Krakovsky's declaration in support of the DIP, and docket
2 number, I believe, 17, which was Mr. Jones's first day
3 declaration. And obviously, Mr. Jones is present in the
4 courtroom to the extent anyone wishes to cross-examine him.

5 THE COURT: Right. And both those matters were
6 entered into evidence in connection with the interim
7 hearings --

8 MR. SIMON: Correct.

9 THE COURT: -- so many weeks ago.

10 Any objection to introducing them into evidence in
11 this matter?

12 MS. LAWALL: Dan, can I just make one comment?

13 MR. SIMON: Please.

14 MS. LAWALL: Your Honor, again, good morning. Fran
15 Lawall, Troutman, on behalf of the -- well, proposed counsel
16 on behalf of the committee. I agree with Mr. Simon's
17 comments. We have some broader comments in connection with
18 the settlement because there were a number of things that
19 settled as part of a package.

20 THE COURT: Okay.

21 MS. LAWALL: And part of the issues that we
22 highlighted in the papers that we have filed will be a
23 continuing concern with respect to, what I call sometimes, the
24 intercompany wealth transfer between nonconsolidated debtors,
25 as well as with respect to support by OpCos with respect to



Colloquy

1 the nonoperating companies.

2 Within at least one of these motions, there is such
3 support, and it is significant. But as part of an overall
4 settlement, in particular because the debtor had impressed
5 upon us the need to make certain governmental payments in
6 connection with that in order to keep, shall I say, the lights
7 on for facilities that are not necessarily debtor concurrently
8 owned facilities but for facilities where they may be using
9 the debtors' Medicare, Medicaid billing numbers and what have
10 you.

11 So anyway, Your Honor, the point here is I just want
12 to make clear throughout today, and as you saw through the
13 tenor of our cases, we are very concerned at this point in
14 trying to keep a close eye and at the same time trying to
15 maintain resident health, safety, and welfare. I'll have more
16 fulsome comments as we go on, but I just wanted, Your Honor,
17 with respect to that one motion, there was that resolution
18 with respect to certain government payments was part of more
19 of a bigger deal.

20 THE COURT: Okay.

21 MR. SIMON: I don't believe I heard an objection to
22 entering those declarations into evidence but --

23 THE COURT: I don't believe I did either on that.

24 MR. SIMON: Okay.

25 THE COURT: His remarks are very illuminating, but



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1 not with respect to the admission of those.

2 So having heard no objections and having previously
3 admitted the same documents into a prior hearing, I will admit
4 both the both the affidavits into this hearing.

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

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

9 MR. SIMON: Okay. With that, Your Honor, I'm just
10 going to make a few brief remarks on the bidding procedures
11 and the resident programs motion. And I recognize this was a
12 packaged deal, so I'll ask you to approve all three at the end
13 rather than go one by one.

14 The resident programs motion, and in particular,
15 they're government payments owing largely on account of CMS
16 obligations. These are cost report settlements, civil
17 monetary penalties, and MAP payments or Medicare advance
18 prepayments. There is a need that is articulated in the
19 motion and articulated in the first day declaration to pay
20 those. The debtors believe that they are appropriate.

21 Part of the analysis of the debtors and the debtors'
22 business judgment was that failure to pay them could have
23 adverse consequences, not just for the debtors, but also the
24 ongoing sale process. And that would provide the evidentiary
25 support if Mr. Jones were to testify with respect to those



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1 payments. I believe, as I heard from Mr. Lawall, that as part
2 of the global solution, they would be amenable to entering
3 that order. And we believe that's appropriate under the
4 circumstances.

5 With respect to the bidding procedures motion, we
6 submitted an order last evening, or yesterday, which did make
7 certain modifications at the request of the committee. They
8 were really two buckets. One is there were certain consent
9 rights granted to the DIP lenders in the initially drafted
10 DIP -- I'm sorry, bid procedures. Those consent rights have
11 turned into consultation rights. The second issue
12 principally, and this was delivered informally, was that the
13 dates were a bit too tight.

14 And so we did modify the sale timeline so that -- let
15 me just pull up my dates real quick. The proposed bid
16 deadline has moved about ten days, and it is for September
17 5th, 2024. The proposed auction, if necessary, would be on
18 September 9th, 2024. And the proposed sale hearing, subject
19 to Your Honor's availability, we don't have this date
20 currently, would be September 11th, 2024. And those dates
21 have been changed in the proposed form of order, and that was
22 done with the consent or at the request of the committee.

23 I'll also note for the record, and Mr. Krakovsky is
24 on the phone, that Stout went live on the sale process on
25 Monday of this week. Stout has begun initial reach outs to



Colloquy

1 the potential buyers. And at least as of last evening,
2 approximately 120 potential buyers have been sent the teaser
3 and an NDA, with a number of parties already executing an NDA
4 and a number of parties already negotiating the NDA.

5 With that, Your Honor, I think the committee's
6 objection to bid procedures was largely that they didn't have
7 the information. That has been provided. We have modified
8 the dates. And we have modified the consent rights. And
9 unless Your Honor had -- well, I said to Your Honor, I would
10 take them all up. So unless Your Honor has any questions,
11 I'll then turn to the DIP and the concessions that have been
12 made there.

13 THE COURT: No. I'll note September 11th works fine.
14 I have the whole day available, so that's --

15 MR. SIMON: Thank you.

16 THE COURT: -- a good date in the -- I looked at the
17 revised dates, and the only thing that, and I think it's just
18 a typographical error at the top of what is now page 7,
19 because it starts, "Within two business days of the conclusion
20 of the auction", or I don't think that's what it's supposed to
21 say, but the debtor will file notice of the successful bidder,
22 but that would actually be on the date of the sale hearing.
23 So it says, "within two business days upon conclusion of the
24 auction".

25 MR. SIMON: We'll change that to as "as promptly as



Colloquy

1 practicable" --

2 THE COURT: Right.

3 MR. SIMON: -- if that's all right.

4 THE COURT: Yeah. It just can't be two days later.

5 MR. SIMON: Correct. I agree. Were there any other
6 questions or comments Your Honor had?

7 THE COURT: I did, no. That was the only thing I
8 noted on there. And --

9 MR. SIMON: Okay.

10 THE COURT: -- our usual starting, like, 9:30, be
11 fine on the 11th.

12 MR. SIMON: Hopefully, there is not also a
13 presidential debate in Atlanta on that day.

14 THE COURT: And Copa America being contested --

15 MR. SIMON: Or a watermain break.

16 THE COURT: -- outside our door so --

17 MR. SIMON: Yes. With that, Your Honor, I think that
18 takes us to the main event, which is the DIP. Obviously,
19 there was a lengthy committee objection. We did file an
20 omnibus response yesterday afternoon. I believe that's -- I
21 don't have the docket number. I think that's docket 167. And
22 there were very serious issues between the parties.

23 I think, once we got here, and obviously, a lot of
24 these discussions occurred late into yesterday evening and
25 have been ongoing for many months, the parties got together,



Colloquy

1 and with the flexibility of this morning afforded by Your
2 Honor, the parties have reached agreement, which I'm going to
3 read into the record.

4 THE COURT: Okay.

5 MR. SIMON: There will be a mass movement, probably
6 to my office back in Midtown, to try to document it into the
7 final form of order and that we would submit, hopefully, to
8 Your Honor for approval.

9 THE COURT: Very good.

10 MR. SIMON: And what I'll do is I'll just read from
11 the agreed upon bullet points and obviously defer to the
12 committee or the DIP lenders with respect to any modifications
13 or misstatements that I make. But this would resolve the
14 committee's objection to the final DIP order. It would also,
15 as Mr. Lawall noted, resolve any remaining objections with
16 respect to the bidding procedures motion, as well as the
17 resident programs motion, and provide for consent to entry of
18 orders on those topics.

19 Bullet number 1 is that the committee budget line
20 item will be increased for the totality of the case to an
21 aggregate amount of two million dollars.

22 Bullet number 2 is that the DIP lenders will agree to
23 what we term "soft marshaling" with respect to proceeds of
24 avoidance actions and commercial tort claims proceeds. What
25 that means is that the DIP lenders will use commercially

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1 reasonable efforts for a period not to exceed nine months
2 after the occurrence of the termination date to look to other
3 DIP collateral in order to collect on account of the DIP
4 claims. When I use the term "termination date", that has the
5 date outlined in the DIP credit agreement.

6 Bullet 3, the committee's investigation budget, which
7 in the interim order was 50,000 dollars. You may have seen
8 that there were certain concessions to bring that up further.
9 The investigation budget would be changed to 350,000 dollars,
10 and that would be inclusive within the originally articulated
11 two-million-dollar committee budget for the case.

12 Bullet 4, the committee reserves the right to assert
13 that any accretive value post-petition pertaining solely with
14 respect to Omega secured parties' pre-petition collateral is
15 not or does not constitute proceeds of the Omega secured
16 parties' pre-petition collateral. That was, I think, with
17 respect to a 552-type argument from the committee in their
18 objection. The pre-petition secured parties, the DIP lenders,
19 and the debtors all reserve their right to oppose such a
20 request.

21 Bullet number 5, the committee reserves the right to
22 file a motion for cause to extend the challenge period. The
23 challenge period runs through September 15th, 2024. They
24 reserve the right to file a motion for cause to extend that
25 period prior to the expiration of such period, which shall be



Colloquy

1 heard on an expedited basis within five business days of the
2 filing of such motion. And for the avoidance of doubt, the
3 committee shall not be required to file a draft complaint
4 together with that motion for cause. And again, the pre-
5 petition secured parties, the DIP lenders, and the debtors
6 reserve the right to oppose such a request.

7 Bullet number -- I think I'm on 6, but mine aren't
8 numbered. Bullet number 6, the committee will be notified of
9 any of the debtors' requests to the DIP lenders for approval
10 of a new approved budget under the DIP.

11 And bullet point 7 is in the current DIP order, there
12 is a paragraph, paragraph 42. Paragraph 42 relates to a
13 settlement made with the United States Department of Justice
14 in the prior bankruptcy case, CMC II bankruptcy case. Current
15 paragraph 42 that is in the redline -- and we have copies if
16 Your Honor needs -- will be stricken and will be replaced with
17 the following. And let me just note, this has been approved
18 by DOJ, and we very much appreciate Mr. Leung, who is on the
19 phone, working with us in that two-hour break to make sure
20 that we all had sign off from the DOJ. But that paragraph 42
21 will be stricken and replaced with the following language:

22 "Notwithstanding anything to the contrary contained
23 herein, nothing in this final DIP order shall impair
24 or otherwise impact the United States security
25 interests granted pursuant to the CMC II settlement,



Colloquy

1 and any such liens shall maintain the same validity
2 and priority as existed prior to the petition date."

3 Those, Your Honor, are the, I believe, seven bullet
4 points that constitute agreement amongst the debtors, the DIP
5 lenders, MidCap as the pre-petition secured parties, and the
6 committee and DOJ with respect to the global resolution to
7 resolve the DIP, as well as the other remaining issues at
8 hand. So with that, I will pause and see if, A, you have any
9 questions on that, or B, if you'd like to hear from other
10 parties on that.

11 THE COURT: I don't have any questions about that. I
12 wrote them dutifully down, although I didn't number them
13 either. And that sounds like a lot was accomplished in the
14 two hours that we delayed and some serious and reasonable
15 progress is made.

16 So I'd love to hear from whoever else wishes to be
17 heard with regard to that resolution.

18 MS. LAWALL: Good afternoon, now, Your Honor. Fran
19 Lawall on behalf of the -- well, proposed counsel for the
20 committee. Your Honor, I agree with Mr. Simon's comments.
21 Just if you can give me just a couple of minutes for some
22 background because this is the first time I've really had an
23 opportunity before you, given the complexity of this case.

24 You saw from the objection that we drafted with
25 respect to the DIP, there are obviously a number of concerns,



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1 given the complexity of this case, 282 debtors, 500 million
2 dollars, probably, of unsecured debt. There is DivestCos,
3 OpCos, and all kinds of relationships which we are going to
4 have to investigate in order to try and find a recovery for
5 the unsecured creditors. And that's our job.

6 As Mr. Simon pointed out, there was a revised order
7 that was filed this morning. And just for purposes of
8 clarity, there were changes in that revised order that were
9 further agreements by the debtor in favor of the committee.
10 So what Mr. Simon had read off was not the totality of, I
11 would say, the progress that has been made over the last two
12 weeks to try and improve the position. And from my
13 perspective, I've been looking at it from the perspective of
14 trying to create a level playing field so the unsecured
15 creditors have the ability to continue to have transparency.
16 And from that perspective, I want to thank the debtor. Maybe.
17 They've probably uploaded over 10,000 pages into our data room
18 so far, which, Your Honor, is part of the reason for the
19 budget that we have.

20 We were concerned that September 15 was honestly too
21 tight for purposes of doing the investigation as necessary,
22 but we agreed to that, with the understanding, as Mr. Simon
23 pointed out, it can be extended for cause under certain
24 circumstances. But that's, just so you understand, why the
25 budgetary issues are there. It's, this is an enormous task to



Colloquy

1 go through all of the transactions. And I'm sure, while I'm
2 sitting here, Mr. Simon's partner has probably sent us five
3 more emails for the data room. They just keep flowing. It
4 just doesn't stop.

5 Well, with respect to the budget, Your Honor, that
6 we've agreed upon, it's obviously not a cap. It's a DIP
7 budget. And so if, in fact, fees exceed that, it's simply
8 covered by the DIP. And if there are other monies in the
9 case, which we hope to find, I'm sure both the debtor, which
10 is covered by a budget limitation in the DIP as well as
11 ourselves, it's not a cap. It's simply within the DIP itself.

12 One of the issues here, Your Honor, is the committee
13 is now going to be getting copies of all the budgets. Now, we
14 understand the debtor has approval to make certain payments
15 under the budget. There are certain ones that have been
16 approved which won't be made yet. Those have to do with
17 respect to the continued motions, in particular the tax
18 motions. And that really goes to this whole issue of, again,
19 trying to keep the operating companies and the DivestCo
20 companies as separate as possible, recognizing in these types
21 of cases, health, safety, welfare of the residents is always
22 key. And so this is the balance, the tightrope that we're
23 walking here, trying to create some recovery.

24 Your Honor, our committee is made up of nine
25 different members. And as you can imagine, there is a



Colloquy

1 significant number of tort claimant representatives there who
2 have learned that unfortunately, over the last at least two
3 years, maybe four years, there has been no real personal
4 injury liability coverage insurance, which means that they are
5 probably also GUC creditors as well, as long as trade. And so
6 everyone is trying to move in the same direction to create a
7 recovery. But of course, it's, there's a lot of diverse
8 interests which we're trying to keep balanced.

9 But you may hear from different parties at different
10 times, and some of these issues are likely to come up. So I
11 just wanted to bring that before Your Honor. It's not unusual
12 in these types of cases.

13 Your Honor, I think that that's probably largely the
14 substance of my comments. I appreciate you having allowed us
15 to practice before Your Honor pro hac vice. My expectation is
16 we'll be spending a lot of time down here trying to move this
17 case forward. The committee will try and do it in a
18 constructive manner. Obviously, at times, we may not agree
19 with the debtor on a number of issues, but I'm sure we'll both
20 try and move things for the best outcome for all creditors
21 involved. Thank you.

22 THE COURT: So you all are off to a good start
23 working with one other.

24 Anyone else? Anyone online?

25 Aha! A volunteer.



Colloquy

1 MR. GORDON: Good afternoon, Your Honor. David
2 Gordon of Polsinelli on behalf of Welltower NNN Group, LLC.
3 We have no objection to any of the matters before the Court.

4 I did want to note, for the record, we had had an
5 informal objection to the bid procedures order that we had
6 raised with counsel. And that was that among the assets that
7 are being -- Welltower is the landlord for nine --

8 THE COURT: Right.

9 MR. GORDON: -- of these facilities. Among the
10 assets being marketed are Welltower's leases. We had raised
11 informally with Mr. Simon that we would like to be a
12 consultation party under that bid procedures order, at least
13 as it relates to our nine leased facilities. Mr. Simon has
14 agreed to that, and I believe that that will be reflected in
15 the revised proposed order. So I just wanted to note the
16 resolution of that informal objection on the record before the
17 Court.

18 THE COURT: Okay. Very good.

19 MR. GORDON: Thank you.

20 MR. SIMON: And that is correct. The form of bidding
21 procedures order does include consultation for Welltower in
22 connection with that auction. And we're always happy to
23 include Mr. Gordon on any auction, regardless of whether he's
24 a participant or not.

25 I'll just note for the record, just in connection



Colloquy

1 with Mr. Lawall's comments, he jokes about the data room, but
2 it is important to us that we provide the committee as much
3 information as possible and as quickly as possible. And I
4 know that they are working hard to get up to speed. It's a
5 very organized data room. It's not as though we dump it in
6 and let them find it. And Ms. Keil, who has been managing
7 that, would have it no other way.

8 So it is very organized. And we did receive an
9 initial diligence request, I think, the day after they were
10 formed. And we've been working hard on that, and we'll
11 continue to work hard on making sure that they have the
12 information necessary.

13 Also a thank you to Mr. Lawall in corralling his
14 committee. We recognize that nine can be difficult at times.
15 And getting nine people to agree on anything is probably
16 challenging.

17 And I want to thank the DIP lenders and MidCap as
18 well for their efforts, not just this morning, but over the
19 last few weeks in working with the parties.

20 I think, with that, that would take us through the
21 agenda. Again, Mr. Jones is in the courtroom to the extent
22 that the Court wishes to hear additional evidence to support
23 the DIP, but otherwise, we would rest on the declarations that
24 have been put in and the consent of the various parties that
25 you've heard from today.



Colloquy

1 THE COURT: Okay. I guess, I don't mean to make your
2 record for you. So if you think the declarations are
3 adequate, then I'm satisfied with them.

4 MR. SIMON: Thank you, Your Honor. We do, and we
5 would rest on those.

6 THE COURT: All right. Anything else on the matters
7 before the Court today that we need to address?

8 I have one other thing I'm reminded of, which we
9 talked about, ombudsman last time. And we're coming up on
10 thirty days from the filing of the case. Where are we in that
11 regard?

12 MR. SIMON: I'll cede the podium to Mr. Adams.

13 MR. ADAMS: Thank you, Your Honor, and thank you for
14 bringing that up. Again, Jonathan Adams on behalf of the
15 United States Trustee. Your Honor, we are coming up on thirty
16 days. And I think all parties agree that a patient care
17 ombudsman is appropriate in this case.

18 We'd ask the Court to just enter an order sua sponte
19 directing our office to appoint patient care ombudsman in the
20 case. I think the Code allows that. I think that would be
21 appropriate in this case. So if the Court would do that, we
22 have made quite a bit of internal moves to try to quickly move
23 on that.

24 We're going to -- our plan right now is to use the
25 long-term care ombudsman in the respective states where these



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1 nursing homes are. I believe there are five states,
2 Pennsylvania, Virginia, North Carolina, Mississippi, and
3 Florida. I have spoken with three of them, and they're on
4 board. I've just been trading calls with the other two, and
5 I'm confident we'll have them on board as well in the next few
6 days. May take us a few days to just logistically get it done
7 on the docket, but that's what we're looking to do right now.
8 If the Court could enter those orders --

9 THE COURT: Okay.

10 MR. ADAMS: -- we'll get to work in finishing that
11 up.

12 THE COURT: We'll get right to that.

13 MR. SIMON: We have been -- we have been working with
14 Mr. Adams on that issue, and we would certainly consent to
15 that order.

16 THE COURT: All right. I looked over the rest of the
17 proposed forms of order. I got a bunch of what I think are
18 typographical and some other things. I won't take up
19 everybody's time. We'll just transmit those to your office.

20 MR. SIMON: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. SIMON: And we'll work this afternoon to submit a
23 new form of order on the DIP as well.

24 THE COURT: Okay. I am here all day today, and we'll
25 be available all day tomorrow. So take your time. Get them



Colloquy

1 right. And when you get them to us, we'll get them entered.

2 MR. SIMON: Thank you, Your Honor. We appreciate
3 your time, your flexibility this morning, and I think we'll be
4 back before you in less than two weeks, July 10th.

5 THE COURT: A settlement that people agree to is much
6 better than a solution that I would impose, so congratulations
7 to everyone for making very good use of the time this morning.

8 MR. SIMON: Thank you, Your Honor. We appreciate it.

9 THE CLERK: Thank you, parties. That concludes all
10 the matters. All rise.

11 (Whereupon these proceedings were concluded at 12:21 PM)

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I N D E X

EXHIBITS:

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

RULINGS:

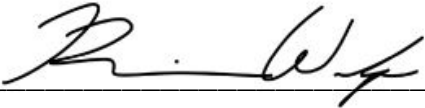
	PAGE	LINE
Debtor's consolidated creditor motion is granted	10	11
Debtors' resident confidentiality motion is granted	10	11
Debtors' limited critical vendor motion is granted	10	11
Debtors' utilities motion is granted	10	11
Debtors' wages and benefits motion is granted	10	11
UST's motion to appoint patient care ombudsman is granted	29	11
Debtors' bidding procedures motion is granted, subject to approval of final order	30	25
Debtors' resident programs motion is granted, subject to approval of final order	30	25
Debtors' DIP motion is granted, subject to approval of final order	30	25



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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

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