

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

IN RE: .
.
. Docket No. 24-55507-pmb
LA VIE CARE CENTERS LLC, .
DEBTOR. .
. Atlanta, GA
. June 27, 2024
. 11:47 a.m.

.

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

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Mineola, NY 11501

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.
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1 APPEARANCES:

2 For the Debtor: DANIEL M. SIMON, ESQ.
3 MCDERMOTT WILL & EMERY LLP
4 1180 Peachtree St. NW, Suite 3350
5 Atlanta, GA 30309
6

7 For the Trustee: JONATHAN S. ADAMS, ESQ.
8 UNITED STATES DEPARTMENT OF JUSTICE
9 362 Richard B. Russell Federal
10 Building
11 75 Ted Turner Dr. SW
12 Atlanta, GA 30303
13

14 For the Official FRANCIS J. LAWALL, ESQ.
15 Committee of Unsecured TROUTMAN PEPPER HAMILTON SANDERS
16 Creditors: 3000 Two Logan Square
17 18th and Arch Streets
18 Philadelphia, PA 19103

19 For Welltower NNN DAVID E. GORDON, ESQ.
20 Group LLC: POLSINELLI LAW FIRM
21 One Atlantic Center, #1100
22 1201 W Peachtree St. NW
23 Atlanta, GA 30309
24
25

I N D E X

- 1) Motion to (A) Prepare a List of Creditors in Lieu of Submitting a Formatted Mailing Matrix, (B) File a Consolidated List of Debtor's 30 Largest Unsecured Creditors, (C) Redact Certain Personal Identification Information for Individual Creditors, (D) Approving Form and Manner of Notifying Creditors of Commencement of these Chapter 11 Cases, (E) Debtors to File their Monthly Operating Reports on a Consolidated Basis (Related Doc #4).
- 2) Motion to Implement Procedures to Maintain and Protect Confidential Health Information as Required by Applicable Privacy Rules and Related Relief.
- 3) Motion for Payment of Prepetition Obligations Owed to Resident Care Vendors and Related Relief.
- 4) Motion to Approve Debtor's Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections by Utility Providers, and (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services (Related Doc #12).

1 5) Motion to (I) Pay Prepetition Wages, Compensation, and
2 Employee Benefits, (II) Continue Certain Employee Benefit
3 Programs in the Ordinary Course, and (III) Granting Related
4 Relief (Related Doc #13)

5

6 6) Tax Motion

7

8 7) Cash Management Motion

9

10 8) Insurance Motion

11

12 9) Motion to Approve Bidding Procedures and Bid
13 Protections, (II) Scheduling Certain Dates and Deadlines
14 with Respect Thereto, (III) Approving the Form and Manner of
15 Notice Thereof, (IV) Establishing Notice and Procedures for
16 the Assumption and Assignment of Contracts and Leases, (V)
17 Authorizing the Assumption and Assignment of Assumed
18 Contracts, and (VI) Authorizing Sale of Assets. (Related
19 Doc # 104).

20

21 10) DIP Motion

22

23 11) Motion to Maintain and Continue Resident Programs and
24 Honor Prepetition Obligations Related Thereto and (II)
25 Granting Related Relief.

I N D E X

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P R O C E E D I N G S

CLERK: The court will come to order.

THE COURT: Please be seated.

CLERK: Good morning, Your Honor. Today is June 27, 2024. The time is now 11:47 AM. We are here for the specially set hybrid hearing for consolidated Case 24-55507, Lavie Care Centers, LLC, et al.

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

The Court is aware of the amended agenda submitted by Debtors' counsel at Docket Number 167. However, given the lengthy discussion period this morning between counsel, we expect the agenda for today may have changed. Please inform the Court how you would like to proceed.

MR. SIMON: Good morning, Your Honor. It is still

1 morning.

2 THE COURT: Just barely.

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

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

13 THE COURT: Sounds like a very productive use of
14 two hours.

15 MR. SIMON: It is Your Honor, and we appreciate
16 your flexibility. Just by way of introduction, at counsel
17 table today, I have Mr. Jack Haake. He was in Newnan with
18 us a few weeks ago. Mr. Jake Jumbeck was not. Emily Keil
19 is on the phone and she was with us at the first day
20 hearing.

21 In addition, we have the Debtors' Chief
22 Restructuring Officer, Mr. Benjamin Jones. And we also have
23 today the Debtors' sole independent manager, Mr. Jim Decker,
24 right here.

25 With those introductions, if it's all right with

1 Your Honor, I'll just kind of walk through where we're at on
2 the amended agenda and identify the -- kind of where we made
3 progress.

4 THE COURT: That would be great.

5 MR. SIMON: Great. So amended agenda was filed
6 last night, Docket 167. There were 11 items up on the
7 agenda. We really broke them down into three categories.
8 I'll start with the easiest, which are there were five
9 motions, all of which were first day motions, where we have
10 either received no objection or otherwise we received sign-
11 off from all of the parties, including the Official
12 Committee of Unsecured Creditors, as well as the Office of
13 the United States Trustee.

14 Those five motions are the consolidated creditor
15 motion, the resident confidentiality motion, the resident
16 care vendor motion -- or what we termed I think last time,
17 the limited critical vendor motion, the utilities motion,
18 and the wages and benefits motion.

19 And so the intent was that we reached agreement on
20 those and we uploaded those orders for Your Honor. One I
21 want to point out specifically with actually substantive
22 modifications. That is the consolidated creditor matrix or
23 the consolidated creditor motion.

24 There was a significant issue outstanding at the
25 first day hearing that was with respect to the filing of

1 monthly operating reports in this case.

2 THE COURT: Right. And I saw you got that down to
3 three.

4 MR. SIMON: Correct, Your Honor. We -- up until
5 about 48 hours before, we thought that would be a contested
6 issue as well. We worked very closely with Mr. Adams and
7 the Office of the United States Trustee. I think all the
8 parties recognized that there was a potential significant
9 administrative issue in doing 282.

10 And so you're correct. There will be three
11 consolidated versions. One for the operating Debtors, which
12 is roughly 43 Debtors; one for divested facilities, but
13 still some activity, which is approximately 97 Debtors; and
14 the rest likely have no cash activity. Those will all be
15 filed in the main case.

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

20 THE COURT: That's very good.

21 MR. SIMON: And with that, with those five, unless
22 Your Honor would have any questions, there were no
23 additional issues from the Committee or any other party.

24 THE COURT: All right. Are there any objections
25 to the entry of the orders proposed in those matters?

1 MR. LAWALL: Not from the Committee, Your Honor.

2 THE COURT: Very good. Anyone either in the
3 courtroom or online? All right.

4 MR. ADAMS: Yes. For the record, Jonathan Adams,
5 on behalf of the U.S. Trustee. I echo the sentiments
6 expressed by various counsel. We appreciate them working
7 with us on the operating reports issue.

8 We still have a few supplementary issues as to
9 what will be attached to those operating reports that we're
10 going to work out in the next few weeks. But we are
11 confident we've reached a good agreement that'll help all
12 parties decipher their financial information in the case.

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

16 MR. SIMON: Thank you, Your Honor. The next group
17 of motions would be there was a response or an objection
18 from the Official Committee of Unsecured Creditors with
19 respect to four motions, four first day motions. There was
20 the taxes -- tax motion, the cash management motion, the
21 insurance motion, and the resident programs motion.

22 And there was a request by the Committee to
23 adjourn those motions for a period of two weeks while we
24 continue to collaborate with them and provide them
25 additional information. The Ankura team has had a number of

1 discussions with their financial advisor, FTI, and they
2 asked us to continue that.

3 The Debtors agreed to continue three of the four.
4 That would be the tax motion, the cash management motion and
5 the insurance motion. And the agreed upon date for that
6 adjournment is the next omnibus hearing, which is scheduled
7 for July 10th.

8 The Debtors are committed to working
9 collaboratively with the Committee to give them comfort on
10 those issues. But we'll put that back on the calendar with
11 Your Honor's permission for July 10th. We may reach
12 agreement before then and we can inform Your Honor.
13 Otherwise, we'll proceed with those on July 10th.

14 THE COURT: Okay. I see with regard to them -- so
15 we're going to be setting those matters to July 10th?

16 MR. SIMON: Correct, Your Honor.

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

19 MR. LAWALL: Not from the Committee, Your Honor.
20 And I apologize. I haven't introduced myself. Fran Lawall,
21 proposed counsel for Troutman, on behalf of the Committee,
22 along with Deborah Kovsky and Matt Brooks.

23 THE COURT: Very good. Hearing no objection to
24 the reset, we'll reset those to the omnibus hearing on July
25 10th.

1 MR. SIMON: Thank you, Your Honor.

2 CLERK: And Your Honor, just for the record, that
3 will be on July 10, 2024 at 9:00 AM, and it will be a hybrid
4 hearing with the in-person parties joining us in Courtroom
5 1202 Atlanta.

6 THE COURT: Very good.

7 MR. SIMON: Thank you. That brings us to what was
8 going to be, or take up, the bulk of the morning and appear
9 to be contested matters at about 9:00 AM. And here we are
10 at about noon, and we have resolution to those.

11 These are the DIP motion, the bid procedures
12 motion, and the resident programs motion. If you recall,
13 the resident programs motion was the fourth motion that the
14 Committee sought an adjournment on. And the Debtors
15 believed it prudent to proceed with that today,
16 notwithstanding that objection.

17 In support of those motions, we do have -- we did
18 have -- we do have two witnesses that were identified on our
19 witness and exhibit list; Mr. Benjamin Jones, the Debtors'
20 Chief Restructuring Officer; Mr. Mike Krakovski, with Stout,
21 the Debtors' proposed investment banker.

22 We do have two declarations that were submitted
23 into evidence as part of the first day hearing. We were
24 planning to submit those into evidence today. We would
25 still submit them into evidence. It was going to be

1 followed by a supplemental direct by Mr. Jones, but
2 hopefully with the resolutions at issue, we can rest on the
3 declaration.

4 So we did have consent from the Committee in
5 advance of today that Mr. Krakovski could attend virtually.
6 He is on the phone. We would ask the Court for the
7 evidentiary basis for the DIP, the bid procedures and the
8 resident programs motion to enter into evidence. It's
9 Docket 16, which is Mike Krakovski's declaration in support
10 of the DIP, and Docket Number, I believe, 17, which was Mr.
11 Jones' first day declaration. And obviously, Mr. Jones is
12 present in the courtroom to the extent anyone wishes to
13 cross-examine him.

14 THE COURT: Right. And both those matters were
15 entered into evidence in connection with the interim
16 hearings --

17 MR. SIMON: Correct.

18 THE COURT: -- so many weeks ago. Any objection
19 to introducing them into evidence in this matter?

20 MR. LAWALL: Dan, can I make just one comment,
21 please?

22 MR. SIMON: Please.

23 MR. LAWALL: Your Honor, again, good morning.

24 Fran Lawall, Troutman, on behalf of the -- well, proposed
25 counsel on behalf of the Committee. I agree with Mr.

1 Simons' comments. We have some broader comments in
2 connection with the settlement because there were a number
3 of things that's settled as part of a package.

4 THE COURT: Okay.

5 MR. LAWALL: And part of the issues that we
6 highlighted in the papers that we have filed will be a
7 continuing concern with respect to the, what I call
8 sometimes, the intercompany wealth transfer between non-
9 consolidated Debtors as well as with respect to support by
10 OpCos with respect to the non-operating companies.

11 Within at least one of these motions, there is
12 such support, and it is significant. But as part of an
13 overall settlement, in particular because the Debtor had
14 impressed upon us the need to make certain governmental
15 payments in connection with that in order to keep, shall I
16 say, the lights on for facilities that are not necessarily
17 Debtor concurrently owned facilities, but for facilities
18 where they may be using the Debtors' Medicare and Medicaid
19 billing numbers, and what have you.

20 So, anyway, Your Honor, the point here is I just
21 want to make clear throughout today and as you saw through
22 the tenor of our cases, we are very concerned at this point
23 in trying to keep a close eye and at the same time trying to
24 maintain resident health safety and welfare.

25 I'll have more fulsome comments as we go on, but I

1 just wanted Your Honor, with respect to that one motion,
2 there was -- that resolution with respect to certain
3 government payments was part of more of a bigger deal.

4 THE COURT: Okay.

5 MR. SIMON: I don't believe I heard an objection
6 to entering those declarations into evidence.

7 THE COURT: I don't believe I did either on that.
8 Remarks are very illuminating, but not with respect to the
9 admission of those. So, having heard no objections and
10 having previously admitted the same documents into a prior
11 hearing, I will admit both the affidavits into this hearing.

12 (Declarations of Benjamin Jones and Mike Krakovski
13 entered into evidence)

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

19 The resident programs motion, and in particular
20 their government payments owing largely on account of CMS
21 obligations, these are cost report settlements, civil
22 monetary penalties, and MAP payments, or Medicare Advance
23 Prepayments. There is a need that is articulated in the
24 motion and articulated in the first day declaration to pay
25 those. The Debtors believe that they are appropriate.

1 Part of the analysis of the Debtors in the
2 Debtors' business judgment was that failure to pay them
3 could have adverse consequences, not just for the Debtors,
4 but also the ongoing sale process. And that would provide
5 the evidentiary support, if Mr. Jones were to testify with
6 respect to those payments.

7 I believe, as I heard from Mr. Lawall, that as
8 part of the global solution, they would be amenable to
9 entering that order, and we believe that's appropriate under
10 the circumstances.

11 With respect to the bidding procedures motion, we
12 submitted an order last evening or yesterday, which did make
13 certain modifications at the request of the Committee. They
14 were really two buckets. One is, there were certain consent
15 rights granted to the DIP lenders in the initially drafted
16 DIP -- I'm sorry -- bid procedures. Those consent rights
17 have turned into consultation rights.

18 The second issue, principally -- and this was
19 delivered informally -- was that the dates were a bit too
20 tight. And so, we did modify the sale timeline so that --
21 let me just pull up my dates real quick -- the proposed bid
22 deadline has moved about 10 days and it is for September 5,
23 2024. The proposed auction, if necessary, would be on
24 September 9, 2024, and the proposed sale hearing, subject to
25 Your Honor's availability -- we don't have this date

1 currently -- would be September 11, 2024. And those dates
2 have been changed in the proposed form of order. And that
3 was done with the consent or at the request of the
4 Committee.

5 I'll also note for the record that -- and Mr.
6 Krakovski is on the phone -- that Stout went live on the
7 sale process on Monday of this week. Stout has begun
8 initial reach-outs to the potential buyers. And at least as
9 of last evening, approximately 120 potential buyers have
10 been sent the teaser and an NDA, with a number of parties
11 already executing an NDA, and a number of parties already
12 negotiating the NDA.

13 With that, Your Honor, I think the Committee's
14 objection to bid procedures was largely that they didn't
15 have the information. That has been provided. We have
16 modified the dates and we have modified the consent rights.
17 And unless Your Honor has -- well, I said to Your Honor I
18 would take them all up. So, unless Your Honor has any
19 questions, I'll then turn to the DIP and the concessions
20 that have been made there.

21 THE COURT: No. I'll note, September 11th works
22 fine. I have all day available. So, that's a --

23 MR. SIMON: Thank you.

24 THE COURT: -- a good day. And I looked at the
25 revised dates and the only thing and the only thing that --

1 and I think it's just a typographical error at the top of
2 what is now Page 7, because it starts within two business
3 days of the conclusion of the auction, or -- I don't think
4 that's what it's supposed to say -- but Debtor will file
5 notice of the successful bidder, but that would actually be
6 on the date of the sale hearing. So, it says, within two
7 business days upon conclusion of the auction.

8 MR. SIMON: We'll change that too, as promptly as
9 practicable.

10 MR. SIMON: Right.

11 MR. SIMON: If that's all right?

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

14 MR. SIMON: Correct. I agree. Were there any
15 other questions or comments, Your Honor had?

16 THE COURT: I did not, no. But that was the only
17 thing I had noted on there.

18 MR. SIMON: Okay.

19 THE COURT: And our usual starting, like 9:30,
20 would be fine on the 11th.

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

23 THE COURT: And Copa America being contested --

24 MR. SIMON: Or a watermain break.

25 THE COURT: -- outside of our door.

1 MR. SIMON: Yes. With that, Your Honor, I think
2 that takes us to the main event, which is the DIP.
3 Obviously, there was a lengthy Committee objection. We did
4 file an omnibus response yesterday afternoon. I believe
5 that's -- I don't have the docket number. I think that's
6 Docket 167.

7 And there were very serious issues between the
8 parties. I think once we got here -- and obviously, a lot
9 of these discussions occurred late until yesterday evening
10 and have been ongoing for many months. The parties got
11 together and with the flexibility of this morning afforded
12 by Your Honor, the parties have reached agreement, which I'm
13 going to read into the record.

14 THE COURT: Okay.

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

19 THE COURT: Very good.

20 MR. SIMON: And what I'll do is I'll just read
21 from the agreed upon bullet points, and obviously defer to
22 the Committee or the DIP lenders with respect to any
23 modifications or misstatements that I make.

24 But this would resolve the Committee's objection
25 to the final DIP order. It would also, as Mr. Lawall noted,

1 resolve any remaining objections with respect to the bidding
2 procedures motion, as well as the resident programs motion,
3 and provide for consent to entry of orders on those topics.

4 Bullet Number 1 is that the Committee budget line
5 item will be increased for the totality of the case to an
6 aggregate amount of \$2 million.

7 Bullet Number 2 is that the DIP lenders will agree
8 to what we term soft marshalling with respect to proceeds of
9 avoidance actions and commercial tort claims proceeds. What
10 that means is that the DIP lenders will use commercially
11 reasonable efforts for a period not to exceed nine months
12 after the occurrence of the termination date to look to
13 other DIP collateral in order to collect on account of the
14 DIP claims. When I use the term "termination date", that
15 has the date outlined in the DIP credit agreement.

16 The Committee's investigate -- Bullet 3. The
17 Committee's investigation budget, which in the interim order
18 was \$50,000, you may have seen that there were certain
19 concessions to bring that up further. The investigation
20 budget would be changed to \$350,000, and that would be
21 inclusive within the originally articulated \$2 million
22 Committee budget for the case.

23 The Committee -- Bullet 4. The Committee reserves
24 the right to assert that any accretive value post-petition
25 pertaining solely with respect to Omega secured parties pre-

1 petition collateral is not or does not constitute proceeds
2 of the Omega secured parties pre-petition collateral. That
3 was, I think, with respect to a 552 type argument from the
4 Committee in their objection. The pre-petition secured
5 parties, the DIP lenders and the Debtors all reserve their
6 right to oppose such a request.

7 Bullet Number 5. The Committee reserves the right
8 to file a motion for cause to extend the challenge period.
9 The challenge period runs through September 15, 2024. They
10 reserve the right to file a motion for cause to extend that
11 period prior to the expiration of such period, which shall
12 be heard on an expedited basis within five business days of
13 the filing of such motion. And for the avoidance of doubt,
14 the Committee shall not be required to file a draft
15 complaint together with that motion for cause. And again,
16 the pre-petition secured parties, the DIP lenders and the
17 Debtors reserve the right to oppose such a request.

18 Bullet Number -- I think I'm on 6, but mine aren't
19 numbered. Bullet Number 6. The Committee will be notified
20 of any of the Debtors' requests to the DIP lenders for
21 approval of a new approved budget under the DIP.

22 And Bullet Point 7 is with -- in the current DIP
23 order there is a paragraph, Paragraph 42. Paragraph 42
24 relates to a settlement made with the United States
25 Department of Justice in the prior bankruptcy case, CMC II

1 bankruptcy case.

2 Current Paragraph 42 that is in the redline, and
3 we have copies if Your Honor needs, will be stricken and
4 will be replaced with the following. And let me just note
5 this has been approved by DOJ and we very much appreciate
6 Mr. Leong, who is on the phone, working with us in that two-
7 hour break to make sure that we all had sign-off from the
8 DOJ. But that Paragraph 42 will be stricken and replaced
9 with the following language.

10 "Notwithstanding anything to the contrary
11 contained herein, nothing in this final DIP order shall
12 impair or otherwise impact the United States' security
13 interests granted pursuant to the CMC II settlement, and any
14 such liens shall maintain the same validity and priority as
15 existed prior to the petition date."

16 Those you're on our are the seven, I believe seven
17 bullet points, that constitute agreement amongst the
18 Debtors, the DIP lenders, MidCap as the pre-petition secured
19 parties, and the Committee and DOJ with respect to the
20 global resolution to resolve the DIP, as well as the other
21 remaining issues at hand.

22 So, with that, I will pause and see if, A, you
23 have any questions on that, or B, if you'd like to hear from
24 other parties on that.

25 THE COURT: I don't have any questions about that.

1 I wrote them dutifully down, although I didn't number them
2 either. And it sounds like a lot was accomplished in the
3 two hours that we delayed, and some serious and reasonable
4 progress was made. So I'm glad to hear from whoever else
5 wishes to be heard with regard to that resolution.

6 MR. LAWALL: Good afternoon, now, Your Honor.
7 Fran Lawall, on behalf of the -- well, proposed counsel for
8 the Committee.

9 Your Honor, I agree with Mr. Simon's comments. If
10 you can give me just a couple of minutes for some
11 background, because this is the first time I've really had
12 an opportunity before you, given the complexity of this
13 case.

14 You saw from the objection that we drafted with
15 respect to the DIP, there are obviously a number of
16 concerns, given the complexity of this case; 282 Debtors,
17 \$500 million, probably, of unsecured debt. There is
18 DivestCos, OpCos, and all kinds of relationships, which we
19 are going to have to investigate in order to try and find a
20 recovery for the unsecured creditors, and that's our job.

21 As Mr. Simon pointed out, there was a revised
22 order that was filed this morning. And just for purposes of
23 clarity, there were changes in that revised order that were
24 further agreements by the Debtor in favor of the Committee.
25 So, what Mr. Simon had read off was not the totality of the

1 -- I would say the progress that has been made over the last
2 two weeks to try and improve the position.

3 And from my perspective, I've been looking at it
4 from the perspective of trying to create a level playing
5 field so the unsecured creditors have the ability to
6 continue to have transparency. And from that perspective, I
7 want to thank the Debtor, maybe. They've probably uploaded
8 over 10,000 pages into our data room so far, which, Your
9 Honor, is part of the reason for the budget that we have.
10 We were concerned that September 15 was, honestly, too tight
11 for purposes of doing the investigation as necessary. But
12 we agreed to that with the understanding, as Mr. Simon
13 pointed out, it can be extended for cause under certain
14 circumstances.

15 But that's why, just so you understand why the
16 budgetary issues are there. It's this is an enormous task
17 to go through all of the transactions. And I'm sure while
18 I'm sitting here, Mr. Simons' partners probably sent us five
19 more emails for the data room. They just keep flowing. It
20 just doesn't stop.

21 Well, with respect to the budget, Your Honor, that
22 we've agreed upon, it's obviously not a cap. It's a DIP
23 budget. And so if in fact fees exceed that, it's simply
24 covered by the DIP. And if there are other monies in the
25 case, which we hope to find, I'm sure both the Debtor, which

1 is covered by a budget limitation in the DIP, as well as
2 ourselves, it's not a cap. It's simply within the DIP
3 itself.

4 One of the issues here, Your Honor, is the
5 Committee is now going to be getting copies of all the
6 budgets. Now, we understand the Debtor has approval to make
7 certain payments under the budget. There are certain ones
8 that have been approved which won't be made yet. Those have
9 to do with respect to the continued motions, in particular,
10 the tax motions.

11 And that really goes to this whole issue of,
12 again, trying to keep the operating companies and the
13 DivestCo companies as separate as possible, recognizing in
14 these types of cases, health, safety, welfare of the
15 residents is always key. And so this is the balance, the
16 tightrope that we're walking here, trying to create some
17 recovery.

18 Your Honor, our committee is made up of nine
19 different members. And you can imagine there is a
20 significant number of tort claimant representatives there
21 who have learned that, unfortunately, over the last at least
22 two years, maybe four years, there has been no real personal
23 injury liability coverage insurance, which means that they
24 are probably also GUC creditors as well along with the
25 trade.

1 And so everyone is trying to move in the same
2 direction to create a recovery, but of course, there's a lot
3 of diverse interest, which we're trying to keep balance.
4 But you may hear from different parties at different times,
5 and some of these issues are likely to come up, so I just
6 wanted to bring that before Your Honor. It's not unusual in
7 these types of cases.

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

17 THE COURT: So you're all off to a good start
18 working with one another. Anyone else? Anyone online?
19 Aha, a volunteer.

20 MR. GORDON: Good afternoon, Your Honor. David
21 Gordon, of Polsinelli, on behalf of Welltower NNN Group,
22 LLC. We have no objection to that any of the matters before
23 the Court. I did want to note for the record, we had had an
24 informal objection to the bid procedures order that we had
25 raised with counsel. And that was that, you know, among the

1 assets that are being -- Welltower is the landlord for nine
2 --

3 THE COURT: Right.

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

13 THE COURT: Okay. Very good.

14 MR. GORDON: Thank you.

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

20 I'll just note for the record, just in connection
21 with Mr. Lawall's comments, he jokes about the data room,
22 but it is important to us that we provide the Committee as
23 much information as possible and as quickly as possible.
24 And I know that they are working hard to get up to speed.

25 It's a very organized data room. It's not as

1 though we dump it in and let them find it. And Ms. Keil,
2 who has been managing that, would have it no other way. So
3 it is very organized. And we did receive an initial
4 diligence request, I think, the day after they were formed,
5 and we've been working hard on that and we'll continue to
6 work hard on making sure that they have the information
7 necessary.

8 Also, thank you to Mr. Lawall in corralling his
9 committee. We recognize that nine can be difficult at times
10 and getting nine people to agree on anything is probably
11 challenging. I want to thank the DIP lenders and MidCap as
12 well for their efforts, not just this morning, but over the
13 last few weeks in working with the parties.

14 I think with that, that would take us through the
15 agenda. Again, Mr. Jones is in the Courtroom to the extent
16 the Court wishes to hear additional evidence to support the
17 DIP. But otherwise, we would rest on the declarations that
18 have been put in and the consent of the various parties that
19 you've heard from today.

20 THE COURT: Okay. I guess -- I don't mean to make
21 your record for you, so if you think the declarations are
22 adequate, then I'm satisfied with them.

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

25 THE COURT: Anything else on the matters before

1 the Court today that we need to address? I have one other
2 thing I'm reminded of, which we talked about an ombudsman
3 last time. We're coming up on 30 days from the filing of
4 the case. Where are we in that regard?

5 MR. SIMON: I will defer -- I'll cede the podium
6 to Mr. Adams.

7 MR. ADAMS: Thank you, Your Honor, and thank you
8 for bringing that up. Again, Jonathan Adams, on behalf of
9 the U.S. Trustee. Your Honor, we are coming up on 30 days
10 and I think all parties agree that a patient care ombudsman
11 is appropriate in this case.

12 We had asked the Court to just enter an order sua
13 sponte, directing our office to appoint a patient care
14 ombudsman in the case. I think the code allows that. I
15 think that'd be appropriate in this case. And so, if the
16 Court would do that. We have made some -- quite a bit of
17 internal moves to try to quickly move on that. We're going
18 to -- our plan right now is to use the long term care
19 ombudsmen in the respective states where these nursing homes
20 are. There are five states. Pennsylvania, Virginia, North
21 Carolina, Mississippi and Florida.

22 I've spoken with three of them and have -- they're
23 onboard. I've just been trading calls with the other two
24 and I'm confident we'll have them onboard well in the next
25 few days. May take us a few days to just logistically get

1 it done on the docket. But that's what we're looking to do
2 right now. If the Court could enter those orders --

3 THE COURT: Okay.

4 MR. ADAMS: -- we'll get to work on finishing that
5 up.

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

7 MR. SIMON: We have been -- we have been working
8 with Mr. Adams on that issue and we would certainly consent
9 to that order.

10 THE COURT: All right. I looked over the rest of
11 the proposed forms of order. I've got a bunch of what I
12 think are typographical and some other things I won't take
13 up everybody's time with. We'll just transmit those to your
14 office.

15 MR. SIMON: Thank you, Your Honor. And we'll work
16 this afternoon to submit a new form of order on the DIP as
17 well.

18 THE COURT: Okay. I'm here all day today and will
19 be here all day tomorrow. So, whenever -- take your time,
20 get them right, and when you get them to us, we'll get them
21 entered.

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

25 THE COURT: A settlement that people agree to is

1 much better than a solution that I would impose, so
2 congratulations to everyone for making very good use of the
3 time this morning.

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

6 CLERK: Thank you, parties that concludes all
7 matters. All rise. Parties joining us virtually, we're
8 going to end the conference. Have a wonderful day.

9 (Whereupon these proceedings were concluded at
10 12:20 PM)

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

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: July 8, 2024

[& - agreed]

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