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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  
July 10, 2024  
9:30 AM

. . . . .

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

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1 Debtors' insurance motion at docket number 10

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3 Debtors' taxes motion at docket number 11

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5 Debtors' cash management motion at docket number 14

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25 Transcribed by: River Wolfe



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Colloquy

1 THE CLERK: Good morning, parties. Today is July  
2 10th, 2024. The time is now 9:30 a.m. We are here for the  
3 specially set hybrid hearing for the consolidated case of 24-  
4 55507, LaVie Care Centers, LLC, et al.

5 At this time, we're going to take official  
6 appearances. We'll begin with those parties in the courtroom,  
7 please.

8 MS. JONES: Good morning. Vivieon Jones for the  
9 United States on behalf of the Internal Revenue Service.

10 THE CLERK: Thank you.

11 Okay. Ms. Jones is our only participant in the  
12 courtroom this morning, so now we're going to move on to those  
13 parties that are joining us virtually, please.

14 MR. SIMON: Good morning. This is Dan Simon,  
15 McDermott Will & Emery, as proposed counsel to the debtors.  
16 I'm joined by my colleague Emily Keil virtually.

17 THE CLERK: Thank you.

18 MR. LEMONS: Good morning. It's Robert Lemons from  
19 Goodwin Procter on behalf of the Omega entities.

20 THE CLERK: Thank you.

21 MR. LEVIN: Matthew Levin on behalf of the Omega  
22 entities.

23 THE CLERK: Thank you.

24 MR. AIKEN: Good morning. Leighton Aiken on behalf  
25 of the Omega entities.



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1 THE CLERK: Thank you.

2 MS. KOVSKY: Good morning. Deb Kovsky, Troutman  
3 Pepper, proposed counsel for the committee.

4 THE CLERK: Thank you.

5 MR. BATES: Good morning. Bryan Bates with Parker  
6 Hudson for MidCap, joined by Dylan Marker of Proskauer.

7 THE CLERK: Thank you.

8 MS. FURR: Good morning. Katie Furr on behalf of  
9 Jacksonville Nursing Home, Ltd.

10 THE CLERK: Thank you.

11 MR. ADAMS: Good morning. Jonathan Adams on behalf  
12 of the United States Trustee.

13 THE CLERK: Thank you.

14 MR. FARAG: Good morning. Michael Farag, Gibson,  
15 Dunn & Crutcher, on behalf of Welltower NNN Group, LLC.

16 THE CLERK: Give me just one moment to write that  
17 down. And you said that you're counsel for Welltower NNN  
18 Group, LLC, correct?

19 MR. FARAG: Correct.

20 THE CLERK: Thank you.

21 MR. FARAG: Thank you.

22 MR. ANTHONY: Morning. Johnny (ph.) Anthony for  
23 Healthcare Negligence Settlement Recovery Corp.

24 THE CLERK: Thank you.

25 Okay. Are there any other parties that are in the



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1 Zoom room that would like to make an appearance at this time?

2 Okay. Parties, thank you. If you'll please mute  
3 yourselves and turn your cameras on, I'll let His Honor know  
4 that we're ready to begin momentarily. Thank you.

5 (Recess from 9:33 a.m. until 9:40 a.m.)

6 THE CLERK: The court will come to order.

7 THE COURT: Please be seated.

8 THE CLERK: Good morning, Your Honor. Today, July  
9 10th, 2024, and the time is now 9:40 a.m.

10 We are here for the specially set hybrid hearing for  
11 consolidated case 24-55507, LaVie Care Centers, LLC, et al.  
12 Pursuant to the amended agenda, the following matters are  
13 uncontested: The insurance motion at docket number 10, the  
14 taxes motion at docket number 11, and the cash management  
15 motion at docket number 14.

16 Debtors' counsel, is this your understanding?

17 MR. SIMON: It is.

18 THE COURT: Excellent. Good morning, everyone.  
19 Morning, Mr. Simon.

20 MR. SIMON: Good morning. Good morning, Your Honor.

21 THE COURT: I understand we have an eventful morning  
22 ahead.

23 MR. SIMON: It should be uneventful, Your Honor, and  
24 certainly want to thank your court and Your Honor for  
25 flexibility and allowing us to appear virtually today, which





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1 should be a relatively short and uneventful hearing.

2 THE COURT: Excellent. So we have the three motions  
3 on. The agenda indicates that they are all uncontested.

4 I guess I should confirm that are there any  
5 objections to any of the three motions by anyone in attendance  
6 today?

7 MR. SIMON: Your Honor, if I may, what I'll do is  
8 I'll summarize some of the changes --

9 THE COURT: Sure.

10 MR. SIMON: -- that we filed last evening that we  
11 believe resolve all of the open issues with respect to these.

12 THE COURT: That'd be fine.

13 MR. SIMON: Is that okay?

14 THE COURT: Yes, and --

15 MR. SIMON: Okay. Thank you.

16 THE COURT: -- I'll note you uploaded proposed orders  
17 that I assume take all those matters into account.

18 MR. SIMON: Correct. Thank you, Your Honor. So  
19 these are essentially the spillover first day motions that, if  
20 you recall when we were before you on June 28th, we reached  
21 agreement with the creditors committee, including a consensual  
22 final DIP order. And as part of those negotiations, we agreed  
23 to continue these three matters to today. That's insurance,  
24 taxes, and cash management. And the principal concern of the  
25 committee was to further discuss these issues to better



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1 understand what monies were being expended with respect to  
2 those facilities that were previously divested prior to the  
3 petition date. So at dockets 232, 234, and 235, we filed  
4 amended or actually revised forms of order for those. So I'll  
5 just go through each of those in turn.

6 Docket 232 is the final form of insurance order. The  
7 blackline of that order really only shows cleanup changes  
8 requested at the request of Chubb to resolve any informal  
9 issues there.

10 In addition, I want to note for the record that  
11 Synergy handles the debtors' insurance policies. And they  
12 purchase insurance on behalf of both debtors and nondebtors to  
13 reduce the cost of insurance across the group. And the  
14 debtors only pay their own share of insurance and will not be  
15 paying for insurance for nondebtors. So I wanted to make that  
16 point, which was important to the committee. That's all the  
17 changes on the insurance order at docket 232.

18 Next up is docket 234. That's the final form of  
19 order for taxes. The only change to that order was at the  
20 request of the official committee of unsecured creditors at  
21 paragraph 2. And it relates solely to the provision regarding  
22 certain real property taxes that are owed under the debtors'  
23 leases. And we've added a provision with respect to real  
24 property taxes relating to previously divested facilities and  
25 that if we are to pay them, they are on a -- they are on in



Colloquy

1 the DIP budget, but if we are to pay them, we would provide  
2 ten days' notice to the committee. And in the event the  
3 committee disagrees, they can seek expedited judicial review  
4 before the Court prior to them being paid. And that is the  
5 only change to that order that we believe resolves the issues  
6 with the committee.

7 And then lastly, with respect to cash management,  
8 that's a revised form of order at docket 235, the changes here  
9 fall into three primary buckets. And let me know if you need  
10 a moment to find that blackline.

11 THE COURT: Nope, I have --

12 MR. SIMON: Or we can --

13 THE COURT: -- it, and I've looked at it so --

14 MR. SIMON: Great. So the first bucket is really  
15 paragraph 6 and 7. That's to resolve any remaining concerns  
16 from the Office of the United States Trustee with respect to  
17 five accounts that are not held at authorized depositories and  
18 technically don't comply with Section 345 of the Bankruptcy  
19 Code. So it's effectively ensuring that those five accounts  
20 never hold more than 25,000 dollars at any given time. And I  
21 believe with those changes, we've resolved all remaining  
22 issues with the Office of the United States Trustee.

23 The second bucket is to address concerns with the  
24 committee, and there is a notwithstanding proviso in paragraph  
25 12 that effectively says that if we seek to make payments not



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1 approved by the Court or not in the corrected budget in excess  
2 of a certain threshold, with respect to previously divested  
3 facilities, we kind of given the same rights to the committee,  
4 where we give them ten days' advance notice, and to the extent  
5 the committee wants to seek an expedited judicial review of  
6 those expenditures, that they can do so. And with that  
7 change, I think we've resolved all of the open issues on cash  
8 management with respect to the committee.

9           And then lastly, there is some language in paragraph  
10 17 that relates to -- just to ensure that we can -- it's  
11 effective effectively to address any concerns amongst our  
12 banks, primarily Wells Fargo and CIBC, where money doesn't get  
13 trapped in some of the intermediary accounts and can kind of  
14 flow back to the main operating account. We found that there  
15 was some issue post-petition in Wells Fargo and CIBC. Just  
16 wanted some more explicit authority to make sure that they  
17 weren't running afoul of the orders and allowing the money to  
18 flow back to the main operating account.

19           So those are the three principal changes in the cash  
20 management order to address the U.S. Trustee concerns, to  
21 address the official committee of unsecured creditor concerns,  
22 and then just to clean up some of the sweep issues with MidCap  
23 and Wells and CIBC.

24           So with those changes, that's the agenda. And we  
25 believe there are no remaining objections from any party on



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1 these three orders. So with that, I'll take any questions  
2 from Your Honor.

3 THE COURT: Okay. I guess maybe we'll confirm.

4 Does anybody disagree with what Mr. Simon just said,  
5 that there are no remaining objections given the revised  
6 language?

7 MS. KOVSKY: Good morning, Your Honor. Deb Kovsky,  
8 proposed counsel for the committee. The committee does not  
9 object to these orders as revised. But we did want to make a  
10 couple of comments, if Your Honor would indulge us.

11 THE COURT: Absolutely.

12 MS. KOVSKY: So first, I want to state that the  
13 committee appreciates the debtors' cooperation and  
14 responsiveness in getting that to the documents and  
15 information we needed to really drill down into the payments  
16 that were proposed to be made. However, the fact remains  
17 there are 280 debtors in these cases, the majority of which  
18 are nonoperating or divested facilities. And unless and until  
19 the Court determines that substantive consolidation is  
20 appropriate, the committee remains, as Mr. Simon indicated,  
21 very concerned about essentially operating debtors subsidizing  
22 nonoperating debtors and divestcos in a manner that perhaps  
23 might not be able to be repaid.

24 The committee continues to look at and evaluate  
25 closely whether these nonoperating entities and divestcos



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1 should remain in Chapter 11. We've been very careful to go  
2 through the various payments to the divestcos. Our  
3 understanding, based on information that the debtors have  
4 provided over the last couple of weeks, is that in addition to  
5 the TSA, there's about 2.8 million dollars total in the  
6 budget, some of which has already been approved, some of which  
7 is being dealt with through the orders before Your Honor  
8 today, that would be going to the divestcos.

9 And the committee was able to get comfortable with  
10 these orders, with the proposed changes based on certain --  
11 I'm not going to call them representations. Let's call them  
12 understandings that have been reached between the debtors and  
13 the committee. And we've gone back and forth with Mr. Simon  
14 on the language of those understandings. So I'm actually  
15 going to rely on my notes here to make sure that I'm not  
16 misstating anything and that I'm accurately capturing what is  
17 understood between the debtors and the committee.

18 So first, we understand that the agreement between  
19 Synergy and CMC III by which Synergy provides services to the  
20 debtors, as well as the Synergy TSA, transition services  
21 agreement, by which Synergy provides services to the  
22 divestcos, are billed at no margin to Synergy, which operates  
23 as a revenue neutral pass-through entity. However, the  
24 committee reserves the right to review the CMC III and Synergy  
25 relationships and any claims that might exist in connection



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1 therewith.

2 In addition, under the various support services  
3 agreements, or SSAs, between CMC III and the various facility  
4 debtors, CMC III is only receiving five percent of adjusted  
5 gross revenue for its consulting fee as defined in the SSAs,  
6 and if there's any decision to increase that consulting fee,  
7 the debtors will first inform the committee and provide  
8 sufficient time for an expedited review by the Court if a  
9 challenge is filed before they go ahead and make such a  
10 change.

11 And then finally, prior to the debtor's payment of  
12 any further pre-petition bed taxes, or provider taxes, the  
13 debtors and the committee will confer to determine whether  
14 such payment is appropriate. If there's a disagreement as to  
15 the timing of paying such provider taxes, the debtors will  
16 provide advance notice to the committee of their intent to pay  
17 such amounts, and the committee will have ten days from the  
18 receipt of such notice to seek an expedited judicial review of  
19 such payments before any such payments are made.

20 So those are the understandings based on which the  
21 committee was able to get comfortable and move forward in a  
22 consensual manner on these various orders that are before the  
23 Court. So I'll pause there if the Court has any questions or  
24 if Mr. Simon disagrees with my recitation of what we is our  
25 agreed understanding.



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1 THE COURT: All right. I guess maybe I'll ask Mr.  
2 Simon to respond first.

3 MR. SIMON: Yeah. I guess my only response, Your  
4 Honor, is that as Ms. Kovsky noted we continue to engage  
5 extensively with the committee. We provided significant  
6 diligence items. We continue to do so on an expedited basis.  
7 We hold numerous calls with their lawyers and their financial  
8 advisors.

9 I would just note for the record, and we've made this  
10 clear to Ms. Kovsky, that while we provided them all of the  
11 diligence necessary regarding the Synergy relationship as well  
12 as the transition services agreement, they are not relevant  
13 for the motions at issue. I understand that they have -- that  
14 those representations or understandings by the committee have  
15 been important to get them to a consensual place today. But  
16 nothing in Your Honor's orders today really relate to payments  
17 to Synergy or payments under the transition services  
18 agreement.

19 We certainly understand the committee's concerns, and  
20 their rights are reserved. But they're not impacted by the  
21 relief proposed in any of the three orders today. And that's  
22 what I'll note.

23 THE COURT: Okay. I certainly appreciate the  
24 perspective provided by the committee and certainly rely on  
25 its -- well, appreciate and rely on its diligence in reviewing





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1 matters like the ones Ms. Kovsky mentioned. So thank you for  
2 that update on sort of where you are and the understandings  
3 that you have with regard to the debtors.

4 Anybody else?

5 MR. ADAMS: Good morning, Your Honor. Very briefly.  
6 Jonathan Adams on behalf of the United States Trustee.

7 As Mr. Simon mentioned, the changes that were in the  
8 cash management motion -- or the cash management order to  
9 resolve the United States Trustee's issues. We do appreciate  
10 debtors' counsel working with us to get the language that we  
11 needed in those. We have no opposition to the entry of the  
12 orders.

13 THE COURT: Very good.

14 All right. Anyone else?

15 So I only had one question for myself, and that had  
16 to do with the very last thing you mentioned about the Wells  
17 Fargo and CIBC paragraph, I'll call it. And so I take it that  
18 that paragraph is to provide the bank's comfort on the way  
19 they're going to operate those accounts. It seems to me that  
20 to the extent there's a party that's affected by the things,  
21 it's MidCap and OHI mezz lender, I guess referred to as the  
22 agents in that paragraph, whose, among other things, deposit  
23 control agreements might be overridden by the paragraph. And  
24 so I believe they're both represented here, and I assume they  
25 are okay with the language in the orders as well.



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1 MR. SIMON: I don't want to speak for them, but I  
2 will. The answer is we've obviously circulated this language  
3 to MidCap as well as the DIP lenders, and their concern was  
4 the same as ours, that cash would get trapped at these  
5 accounts. And they have been supportive in helping us with  
6 language to get around that. And I'll let them speak if I  
7 misstated the record.

8 MR. LEVIN: Matthew Levin on behalf of OHI mezz  
9 lender. We have no objection to the language in the order.  
10 That was consistent with the prior discussions between the  
11 parties.

12 THE COURT: Okay. Very good.

13 MR. BATES: Bryan Bates for MidCap. Same for us.

14 THE COURT: Very good. All right. Well, as I said  
15 that was the only real issue I had with any of the -- any of  
16 the language. Just wanted to confirm that the parties  
17 affected were also okay with it since that wasn't necessarily  
18 the main thrust of the motions. But I'm happy to include the  
19 language in the order if it makes life easier for everyone.

20 All right. Anything else we need to hear or discuss  
21 with regard to the pending motions?

22 MR. SIMON: Nothing from the debtors, Your Honor.

23 THE COURT: Okay. Very good. Well, I think we've  
24 managed to --

25 MS. KOVSKY: Your Honor, Deb --



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1 THE COURT: Uh-oh.

2 MS. KOVSKY: -- Kovsky for the proposed counsel --

3 THE COURT: Sure.

4 MS. KOVSKY: -- for the committee. Not with respect  
5 to the pending motions, just a housekeeping matter --

6 THE COURT: Sure.

7 MS. KOVSKY: -- on the bar date order, which Your  
8 Honor has already entered. The debtors, at the committee's  
9 request, did include a provision specifying that separate  
10 proofs of claim may be filed with respect to each debtor,  
11 consistent with the committee's concern. Of course, these  
12 things all need to be kept separate until there's a  
13 determination otherwise.

14 We just wanted to clarify, and I think our  
15 understanding is the same as the debtors', that creditors  
16 don't necessarily need to send in a separate piece of paper  
17 for each separate debtor. As long as they are delineating  
18 within their proof of claim which debtor, which amount, we  
19 would deem that to be separate proofs of claim. And I  
20 understand that the debtors are of the same position. We just  
21 wanted to put that on the record.

22 THE COURT: Okay. So if a creditor were to comply  
23 with that, would it matter which case they filed a proof of  
24 claim in, or they file the same proof of claim in each case?  
25 What are you -- what are you thinking about that?



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1 MS. KOVSKY: From the committee's perspective, it  
2 doesn't really matter which case they filed it in.  
3 Presumably, many people file in the main case. As long as  
4 they're specifying debtor amount so that we can keep track of  
5 who thinks who owes what, then we think that the bar date  
6 order is satisfied. And my understanding is that the debtors  
7 have the same position.

8 MR. SIMON: We agree with that, Your Honor.

9 THE COURT: Okay.

10 MR. SIMON: We're all about efficiencies and would  
11 certainly prefer one piece of paper that delineates what  
12 claims they may have in each of the cases. So we would be  
13 fine with that approach.

14 THE COURT: Okay. And yeah, probably the main case,  
15 to the extent folks get word out, probably the simplest place  
16 to put it all. But wherever they file it, they file it.

17 MR. SIMON: Yes, and we do have procedures to allow  
18 those parties to file it electronically so it doesn't have to  
19 go on the docket.

20 THE COURT: Right.

21 MR. SIMON: And as you know, KCC is the debtors'  
22 claims and noticing agent and is assisting with these matters.

23 THE COURT: Right. Okay. Has vast experience in  
24 dealing with lots of proofs of claims so --

25 MR. SIMON: They do.



Colloquy

1 THE COURT: -- we trust it'll all turn out well.

2 All right. Anything else we ought to discuss?

3 Otherwise, we can call this hearing to a close and allow you  
4 all to go do more productive things with the rest of your day.

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

6 THE COURT: All right. Hearing none, we'll grant all  
7 three motions and enter the orders in the forms proposed,  
8 which I understand have been uploaded.

9 MR. SIMON: Have a great day, Your Honor. Thank you.

10 THE COURT: All right. You, too.

11 THE CLERK: Okay. All rise.

12 (Whereupon these proceedings were concluded at 9:59 AM)

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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.



July 15, 2024

\_\_\_\_\_  
RIVER WOLFE

\_\_\_\_\_  
DATE

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