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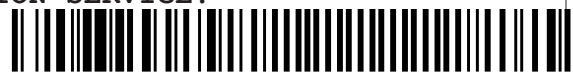
IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: .  
. .  
LAVIE CARE CENTERS, LLC, et al.. Docket No. 24-55507-pmb  
DEBTORS. .  
. . . . . Adv. Proc. No. 24-05127-pmb  
LAVIE CARE CENTERS, LLC, et al..  
Plaintiffs, . Atlanta, GA  
v. . July 24, 2024  
HEALTHCARE, . 10:11 AM  
Defendant. .  
. . . . .

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

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Mineola, NY 11501

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14  
15 ALSO APPEARING:

16 BENJAMIN JONES  
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I N D E X

1) Motion for Entry of Order (I) Extending the Automatic Stay and/or Enjoining Claims and Causes of Action Against Non-Debtor Defendants and (II) Expedition Filed by Daniel M. Simon on behalf of La Vie Care Centers LLC.

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I N D E X

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P R O C E E D I N G S

THE COURT: Please be seated.

CLERK: The court will come to order. Good morning, Your Honor. Today is July 24, 2024, and the time is now 9:44 a.m. We are here for the omnibus hybrid hearing for Case Number 24-55507, LaVie Care Centers, LLC, et al. and the specially set hybrid hearing in Adversary Proceeding 24-05127, LaVie Care Centers, LLC, et al. v. Healthcare Negligence Settlement Recovery Corp.

There were two items on the Court's calendar this morning for Your Honor to consider, however, pursuant to the third amended (indiscernible) general order July 24, 2018, an order was entered on July 22, 2024 granting consolidated Case Docket Number 140, which was the debtors' motion for entry of Order 1, Authorizing Employment and Payment of Professional Fees in the Ordinary Course of Business, and 2, Granting Related Relief.

That only leaves one matter for the Court to consider this morning. That item is Number 1 on the Court's agenda, the state's (indiscernible) motion at Docket Number 2 in the Adversary Proceedings case.

THE COURT: And with that, Mr. Simon?

MR. SIMON: Good morning, Your Honor. Again, Dan Simon, McDermott Will & Emery, on behalf of the debtors. I'm joined today at counsel table with Mr. Nathan Bull, my

1 litigation partner, and we're also joined today again by Mr.  
2 Benjamin Jones, the debtor's chief restructuring officer  
3 from Ankura Consulting. There is only the one item on the  
4 agenda on the adversary but with Your Honor's permission I'd  
5 like to just provide a few brief status updates, and then  
6 Mr. Bull will be handling much of the matter on the agenda.

7 THE COURT: Okay, that'd be fine.

8 MR. SIMON: First and foremost, last week, the  
9 debtors completed the filing of schedules and statements,  
10 282 schedules and statements now on the docket. It was, as  
11 you can imagine, quite a momentous effort. That was a joint  
12 effort really between the Synergy team as well as Ankura  
13 Consulting with a little assistance from McDermott, but we  
14 appreciate the efforts.

15 And there's -- Mr. Adams is in the courtroom, and  
16 there is a continued 341 meeting set for August 12th, where  
17 we'll be working through the debtors' schedules and  
18 statements. And I think that will be an all-day affair.

19 Second status update is that the sale process,  
20 being run by Stout, is well underway. As of today, Stout  
21 has reached out to approximately 145 potential buyers, of  
22 which 29 have signed the NDA and have received the  
23 confidential information memorandum. A number of those are  
24 active in Stout's data room. And as Your Honor may recall,  
25 the bidding procedures entered, set a bid deadline of

1 September 6th, an auction date of September 9th and a  
2 proposed sale hearing date of September 11th. And just last  
3 night we did file a Notice of Potential Contracts kind of  
4 cure amounts that was required under the bidding procedures.

5 And then third and finally, last night the debtors  
6 did file a combined plan and disclosure statement. If you  
7 recall from the first day of the case, the debtors had a  
8 milestone in their DIP financing to allow 45 days for the  
9 filing. That was actually last week. We sought an  
10 extension from the DIP lenders and filed it yesterday. And  
11 I'll just note for the Court that the plan is effectively  
12 acting as a template and a starting point for all the  
13 parties to review and digest and comment on. We view it as  
14 an iterative process. And as the sale process unfolds, the  
15 document will continue to evolve.

16 The Bankruptcy Code provides for 28 days' notice  
17 for a disclosure statement hearing. We recognize the  
18 importance of building in the sale process into that. We  
19 have a sale hearing date scheduled for September 11th, which  
20 is actually 50 days from the filing, and we would look to  
21 notice the disclosure statement hearing that far in advance  
22 for September 11th, which will kind of coincide with the  
23 sale process. And so, those are the primary updates for  
24 today. So, unless Your Honor has any questions, we can  
25 probably turn to the agenda.

1 THE COURT: I don't so please proceed.

2 MR. SIMON: Okay. The only item on the agenda for  
3 today is the adversary, is the debtors' motion filed at  
4 Adversary Docket Number 2 for an order extending the  
5 automatic stay and/or preliminarily enjoining the claims and  
6 causes of action. I think we'll probably be referring to  
7 either the Florida action or the Miami action, but they're  
8 the action that's currently pending with respect to  
9 Healthcare Negligence Settlement Recovery Corp.

10 My partner, Mr. Bull, will be addressing the Court  
11 with respect to the legal arguments. But before we get  
12 there, we did confer with Mr. Anthony as Counsel regarding  
13 evidence and testimony. Our complaint, which was filed at  
14 Docket Number 1, attached a declaration of Mr. Jones. Mr.  
15 Anthony and the parties have agreed to stipulate to the  
16 introduction of that declaration of Mr. Jones, which itself  
17 has a number of exhibits, I think five exhibits, one of  
18 which is the complaint in the underlying matter as well as  
19 the various documents referenced in the Jones declaration,  
20 such as the Support Services Agreement, the Administrative  
21 Services Agreement, the LaVie Care Center's Operating  
22 Agreement and then a sample Operations Transfer Agreement.

23 So, I think we have agreement with Mr. Anthony on  
24 streamlining today's hearing and a stipulation to the  
25 introduction of Mr. Jones' declaration into evidence



1 including those supporting documents, and that no additional  
2 live testimony or cross-examination of Mr. Jones or any  
3 other party would be necessary, unless Your Honor has any  
4 questions for Mr. Jones. So, with that representation on  
5 the record, we would seek to introduce the evidence --  
6 introduce into evidence Mr. Jones' declaration, including  
7 the exhibits that are attached to that declaration.

8 THE COURT: All right. Mr. Anthony?

9 MR. ANTHONY: Counsel has directly stated --

10 THE COURT: Do you want to state your name for the  
11 record? We only have an audio record so...

12 MR. ANTHONY: John Anthony. Anthony & Partners  
13 for the defendant.

14 THE COURT: Okay. And so with that agreement, the  
15 declaration is admitted.

16 (Debtors' Exhibit entered into evidence)

17 MR. SIMON: Thank you, Your Honor. And with that,  
18 I will turn the podium over to Mr. Bull.

19 MR. BULL: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. BULL: Nathan Bull from McDermott Will & Emery  
22 for the debtors. And I'd like to thank Your Honor for  
23 hearing this on an expedited basis. I'd like to start with  
24 a brief overview of the Florida action, which is  
25 overwhelmingly about the conduct of the debtors. Recovery

1 Corp says it pulled together claims from 97 tort plaintiffs  
2 against the debtors and non-debtors. The tort plaintiffs'  
3 claims were for alleged negligence of the debtors' nursing  
4 home facilities. The debtors entered into structured  
5 settlements to settle those claims and at some point over in  
6 2023 and 2024, they stopped making those payments because  
7 they were unable to do so.

8 Recovery Corp now asserts claims against 49  
9 debtors and just nine non-debtors seeking about 8.7 million  
10 in missed settlement payments. The non-debtors include Mr.  
11 Dan Diaz, who was a lawyer that defended the debtors in the  
12 negligence cases, operators of the facilities including  
13 Aspire and Inspire, and Synergy, which provides  
14 administrative services to the debtors and operators.

15 Recovery Corp claims that the debtors defaulted on  
16 the settlements intentionally and moved assets beyond the  
17 reach of plaintiffs. The claims include fraudulent  
18 conveyance, success reliability, veil piercing and breach of  
19 fiduciary duty. We, of course, dispute these claims. But  
20 the common thread here is they all concern the conduct of  
21 the debtors. The debtors' alleged negligence in the nursing  
22 homes, the debtors' failure to make settlement payments, the  
23 debtors' alleged fraudulent conveyances. There's simply no  
24 way to extricate the debtors from these cases. Any claims  
25 that proceed will necessarily implicate that they have the

1 debtors enforced them to be involved.

2 So, moving to the legal basis for the stay, we  
3 think there's three grounds, the first two of which are  
4 under the Automatic Stay Provision 362, including 362-A3,  
5 which stays claims that belong to the debtors; and 362-A1,  
6 which stays claims against the debtors, here under the  
7 theory that the debtors, the real party defendant, for  
8 claims against the non-debtors. And the third basis is  
9 105A, which gives the Court equitable power to issue any  
10 order necessary for the Chapter 11 cases.

11 The first two grounds on the automatic stay we  
12 believe do not require injunction but can be done by a  
13 declaration that the stay applies as an automatic stay of  
14 self (indiscernible). So, starting with claims that belong  
15 to the debtors' estate, that includes fraudulent transfer,  
16 success reliability, de facto merger, veil piercing and  
17 breach of fiduciary duty. These are quintessential estate  
18 claims. These are claims that are generalized and don't  
19 have any particularized harm to any creditor. They're in  
20 the heartland of claims that belong to the estate.

21 Recovery Corp doesn't contest this, it concedes  
22 it. In Paragraph 23 on its objection, Recovery Corp says,  
23 standing to assert these causes of action is typically  
24 afforded only to the trustee or the debtor in possession.  
25 They concede it. And then they make the argument that they

1 should have derivative standing to pursue these claims.  
2 Without getting into the substance of derivative standing of  
3 that argument, which we don't think is relevant here but  
4 imagine we disagree with it -- a derivative case, of course,  
5 is brought on behalf of the company. It belongs to the  
6 company. So, by arguing it has derivative standing,  
7 Recovery Corp is again conceding the claims belong to the  
8 estate and therefore they're subject to the automatic stay  
9 and they should be stayed.

10 Turning to claims against the debtors, we think  
11 that includes unfair trade practices, civil conspiracy and  
12 unjust enrichment. And Recovery Corp was correct -- the  
13 362-A1 only applies to non-debtors in unusual circumstances.  
14 But we cite the case law in our brief and reply that finds  
15 those unusual circumstances exist where the debtor is  
16 actually the real party defendant, such that a judgment  
17 against the other defendant would, in effect, be a judgment  
18 against the debtor.

19 And this applies here for two reasons that have  
20 been recognized by courts: First, the claims against the  
21 debtors and the non-debtors are inextricably intertwined, so  
22 that a judgment against the non-debtors will have a  
23 preclusive effect against the debtors. And second, the  
24 debtors have indemnification obligations to the non-debtors,  
25 they will bear responsibility for fees and judgments

1 incurred.

2 Taking the first basis, the claims here are so  
3 intertwined, that if they proceed, the debtors have to get  
4 involved. The claims depend on adverse findings against the  
5 debtors. This is a case brought against the debtors for the  
6 debtors' defaults and settlement obligations. Without the  
7 debtors' defaults, there would be no Florida action.  
8 Recovery Corp doesn't address this basis in its objection.  
9 It hasn't explained how it can pursue its case against the  
10 non-debtors without implicating the debtors, and that's  
11 because it can't be done. It's not feasible. So, for this  
12 reason alone, those claims should be stayed.

13 And taking the second basis, the claims are stayed  
14 due to the indemnification obligations. And we cite the  
15 cases in our brief that indemnification obligations are a  
16 classic example of a real party defendant situation that  
17 warrants enforcement of the automatic stay. And these  
18 obligations are pursuant to agreements attached to the Jones  
19 declaration. They cover the third party claims relating to  
20 the operations of the debtors' facilities and claims against  
21 the indemnified representations of the debtors in that  
22 capacity.

23 These indemnities cover the claims brought by  
24 Recovery Corp. If there is an adverse judgment, that may  
25 well be the responsibility of the debtors. Even if there's

1 not an adverse judgment, the legal fees incurred defending  
2 the claim will be an obligation of the debtors. Recovery  
3 Corp doesn't contest the application of the provisions,  
4 whether to the claims or to the non-debtors in their  
5 capacity as agents and managers of the debtors. What they  
6 say is the obligations are not definitive and they point to  
7 what they call limitations or conditions precedent. The  
8 limitations are typical carve outs for willful misconduct  
9 and fraud. The condition precedent is a typical notice  
10 requirement, which also says failure to give notice does not  
11 relief the indemnitor of its obligations.

12 There's nothing in the case law that says these  
13 limitations undermine the application of the automatic stay.  
14 What the cases talk about are potential claims for  
15 indemnification and indemnification obligations that may be  
16 ultimately unsuccessful, because even those claims will have  
17 adverse economic consequences for the debtors. If Recovery  
18 Corp is right, any indemnification obligation would have to  
19 be fully litigated. No court has said that in this context.

20 And the final ground we rely on is for the Court  
21 to exercise its equitable powers under 105(a) and issue an  
22 injunction. And as the Court knows, 105(a) provides it with  
23 the power to issue any order, process or judgment that is  
24 necessary or appropriate. I won't belabor the factors of  
25 the PI because I think they're largely duplicative of the

1 other arguments, but I'll note for irreparable harm we  
2 submitted the declaration from Mr. Jones, and he explained  
3 that the continued prosecution of these claims will deplete  
4 the estate's resources and distract the debtors' personnel  
5 and professionals.

6 For its part, Recovery Corp has introduced no  
7 evidence that any harm will come its way or that this harm  
8 won't occur to the debtors. To the contrary, as I suspect  
9 Mr. Anthony will tell you, he said he doesn't intend to move  
10 the case forward. So Recovery Corp is conceding with the  
11 balance of equities tips towards the debtors, that it will  
12 suffer no harm from the stay. So, if Your Honor has any  
13 questions, I'm happy to take them, otherwise I'll turn it to  
14 Mr. Anthony.

15 THE COURT: I do not. It seems like a summary of  
16 the pleadings I've already read but thank you.

17 MR. BULL: Thank you.

18 MR. ANTHONY: Good morning, again, Your Honor.  
19 John Anthony for the defendant, Healthcare Negligence  
20 Settlement Recovery Corp.

21 THE COURT: You're actually the plaintiff, I  
22 guess. Actually, you're the defendant in this case --

23 MR. ANTHONY: We're the defendant in this case; in  
24 Miami we're the plaintiff, which is where we might likely  
25 wish go back to sometime soon. Your Honor, the scheduling

1 of this on an expedited basis was unnecessary. I appreciate  
2 the time, though, because it allows us to vet the issues  
3 that really have underlaid this case and how we got here.  
4 We want to talk a little bit about how we got here, the  
5 Miami case, why this adversary proceeding was filed when we  
6 said three months ago on the petition date that we would not  
7 take further action without either going to the Court or  
8 getting consents from the creditors committee and the  
9 debtors. And then we want to talk about this motion --

10 THE COURT: Let me ask you something. If that's  
11 your concession or what you say -- and I think you said that  
12 in your papers too -- then I'm a little mystified by why  
13 you're opposing this motion.

14 MR. ANTHONY: Well, Your Honor, we're opposing the  
15 motion because we're not conceding anything on the facts and  
16 we don't think you can get there on 65(d) with respect to  
17 findings of facts, conclusions of law. And I think it's  
18 because there's so much that hasn't been said to Your Honor  
19 about these debtors, these 282 debtors, and the 101  
20 claimants, victims in Florida who I've come to represent.

21 So it is, I understand, a business case --  
22 sometimes there isn't as much focus on the product or the  
23 service that's being offered. But Healthcare Negligence was  
24 created because of many hundreds of victims out there of  
25 these Consulate nursing homes. They're Legacy Consulate,



1 which is a bankruptcy case from 2021 that was filed because  
2 of a qui tam claim that was extraordinarily large, a nine-  
3 figure claim, and obviously horrible service of patients and  
4 residents in nursing homes. Ultimately, a business entity  
5 called Synergy emerged from that and several subs were  
6 created and one of them was this debtor. And this debtor  
7 had many, many subs of their own, many of them in Florida.

8 And Mr. Dan Diaz, an attorney in Florida, defended  
9 many of those lawsuits with the 17 law firms that I work  
10 with. And Mr. Diaz negotiated settlement agreements, timed  
11 agreements, last year that all went into default, fairly  
12 predictably, in what seems to be an orchestrated way, after  
13 saying to the various plaintiff's lawyers in Florida that  
14 we're going to be able to make these payments, we know that  
15 we did something wrong, we stipulate that we owe the money.  
16 So \$10.5 million worth of settlements were supposed to be  
17 paid over time. Instead, what happened was the entire  
18 matrix of business entities was effectively booby-trapped.

19 Now, by March of this year, the lawyers, the  
20 plaintiff's lawyers that I work with and represent had  
21 figured out that of the 67 counties in Florida, there were  
22 cases all over the place with Consulate entities being sued,  
23 with Consulate entities defaulting under agreements, and we  
24 tried to figure out what are we going to do? We're not  
25 going to go from county to county to county holding Dan Diaz

1 responsible for all of that. But we looked up and realized  
2 that he was a principal or a director of some of these  
3 companies, even the transferees.

4 So, a business entity was formed in order to bring  
5 a specialty piece of litigation in Miami. There are four  
6 specialty courts, complex business divisions out of all 67  
7 counties in Florida. One of them is in Miami, which is  
8 where we brought the case. We effectuated service.  
9 Everybody was served, discovery was set out. Mr. Simon  
10 prepetition appeared for the debtors we've named, 49 of  
11 them, and then a lawyer in Mr. Diaz' office appeared for the  
12 remaining ones, including three of these companies that are  
13 parents and transferees.

14 Now, Synergy it used to be called Consulate, is  
15 actually the parent of two business entities that, as far as  
16 we know, are parents of transferees. So, Your Honor has  
17 heard these terms a SNIF, a skilled nursing facility, and  
18 you've also heard of OPCOs, we have 43 OPCOS. And we have  
19 the rest of them, besides LaVie, the parent, are divescos,  
20 which we call that transferors under the Uniform Fraudulent  
21 Transfer Act to the extent that we're bringing claims like  
22 that.

23 So, when we brought our lawsuit, we had limited  
24 information in April of 2022. We didn't know everything  
25 that we know now three months later, but we brought five

1 counts that are either under the UFTA, Uniform Fraudulent  
2 Transfer Act, or as noted, mere continuation, de facto  
3 merger and veil piercing. And, Your Honor, I do want to  
4 skip to the chase, it's true we understand the concept of  
5 544B and 541A and the augmented estate and how those claims  
6 normally switch hands in connection with the filing of a  
7 Chapter 11.

8 THE COURT: Well, they belong to the debtors, and,  
9 in this case, we have creditors committee who's, among other  
10 things, investigating those kinds of claims.

11 MR. ANTHONY: Right.

12 THE COURT: And your client's on the creditors  
13 committee.

14 MR. ANTHONY: Right. And, Your Honor, that's one  
15 of the reasons why this was a complete nonemergency. Is  
16 because as we wait, we're not waiting to kick the can down  
17 the road; we're waiting to figure out what to do next.

18 The case that we commenced also had four other  
19 counts that do not fall into that category: The Uniform  
20 Deceptive and Unfair Trade Practices Act claim, the civil  
21 conspiracy claim, the breach of fiduciary duty claim against  
22 Mr. Diaz and the unjust enrichment claim. These are against  
23 non-debtors, and we don't think there's any doubt that those  
24 could be brought.

25 THE COURT: Right but doesn't the breach of

1 fiduciary duty claim belong to the debtors and you're  
2 seeking to enforce it as a creditor. And so, they haven't  
3 not enforced it.

4 MR. ANTHONY: Your Honor, the breach of fiduciary  
5 duty claim, to the extent that we have Mr. Diaz directly as  
6 counsel for the defendants in the various -- those 101 PI  
7 cases, nursing home negligence cases, saying while he's a  
8 member of the board of the transferee, while he's  
9 negotiating with someone who's undisputedly a creditor, he  
10 personally had a duty to be honest about what was going on.  
11 And he breached that duty.

12 So, this is not a garden variety breach of  
13 fiduciary duty DNO type claim. Now, it may be covered that  
14 way. But what we're saying is that Mr. Diaz lied to 17  
15 lawyers who I work with closely, who I've talked to and  
16 said, okay, we understand that that's a separate claim. The  
17 same thing with these --

18 THE COURT: You had a fiduciary duty to them?

19 MR. ANTHONY: I'm sorry, Your Honor?

20 THE COURT: You had a fiduciary duty to them?

21 MR. ANTHONY: In the state of Florida, a director  
22 of a company, an officer of a company has a duty to equity  
23 for so long as the business entity is solvent, and to  
24 creditors for so long as -- when it becomes insolvent, and  
25 to make an express representation to the lawyers when

1 negotiating, saying we know we owe you money, you're going  
2 to agree and you're going to get timed payments while at the  
3 same time he's arranging the transfers in question. Now,  
4 Your Honor, this is not a garden variety case.

5 What happened -- and we now know what happened a  
6 lot more. In fact one of the reasons that we have said  
7 we're not going to take -- it's not the concession, it's not  
8 an admission -- we don't know what motion to file because  
9 the bankruptcy schedules were filed over the last several  
10 days; a plan was apparently filed while I was driving up  
11 here and we have the creditors committee looking at these  
12 issues. So, the question really is what will the next step  
13 be? And we certainly don't believe that where we are,  
14 there's a basis for granting relief.

15 Now, I will say that there may be a basis for a  
16 stay, and cutting to the chase, we certainly would like to  
17 have this hearing continued a couple weeks down the road. I  
18 think the next hearing is August 13th. But let's take a  
19 look at what's really going on here. Your Honor has a  
20 motion that was filed in the first couple of days of the  
21 case for a 364, and another for 363 relief, and both of them  
22 contemplate the release of claims that belong to my debtors.  
23 Now, let's take a look at the divesco issue.

24 Divesco is -- there are no claims of the kind that  
25 my clients have that are in the hands of an operating

1 company. So, anybody who wants to bid on an operating  
2 company in connection with a 363 sale does not need to  
3 acquire the claims that I'm asserting. And we know that the  
4 debtor isn't going to assert them because all these  
5 transfers occurred -- we know now -- we didn't know in April  
6 '22 when I filed my lawsuit in Miami -- but we do know now  
7 that McDermott Will & Emery was retained at the latest last  
8 February. The transfers that impacted my debtors, my  
9 clients and the debtors that they were suing, occurred after  
10 that. And the transfers could not have occurred but for the  
11 fact that my clients canceled trials, and did settlements,  
12 and awaited for payments in 2024 that we all knew wouldn't  
13 come. Now, many of these transfers were last May. This  
14 filing was perfect, except for my client. And by that I  
15 mean 12 months after the transfers that affected several of  
16 my clients occurred, wait 12 months, 548, boom, filing is on  
17 June 2nd, June 3rd.

18 So, when we talk about what's going to happen with  
19 282 debtors, the first thing you have to look to is  
20 likelihood of success and the merits under 105(a) when we  
21 were looking at Rule 65 analysis, what is going on with  
22 these cases? I have 238 debtors that have nothing,  
23 including all of mine. Why do they have nothing? Why do my  
24 clients' debtors have nothing? Because they transferred  
25 everything because we were suing them. That's all that

1 happened.

2 So, the most likely thing that's going to happen,  
3 when you look at likelihood of success on the merits, is  
4 next week, after I get back to Tampa, we'll likely file a  
5 motion under 11-12 and say either dismiss it -- not all  
6 these cases, not the OPCOs, but dismiss the ones that I've  
7 sued because they have no assets other than arguably the  
8 property of the estate under 544(b). The claims I've  
9 identified. The claims that may have put my debtors into  
10 this case. But the bottom line is either you convert those  
11 debtors, and we'll have the Chapter 7 Trustee waive  
12 attorney-client privilege and find out what McDermott Will &  
13 Emery was telling them to do while my clients were suing  
14 them. We could do that or go to Miami.

15 But to say that all of these debtors have a  
16 likelihood of success on the merits, to me, at best is  
17 conclusory and at worst, it's specious. My clients have  
18 claims against debtors that have nothing, that cannot  
19 reorganize. So then we go to the next thing -- and not only  
20 that but the 105(a) inoculation and the inoculations under  
21 364 and 363 would actually deprive my clients of claims that  
22 I think the Supreme Court is pretty interested in me  
23 keeping.

24 So, there I think we have some major issues. And  
25 I think that goes really to the public policy issues. The

1 public policy here, Your Honor, is pretty significant. I  
2 represent the estates of dead people, and those estates were  
3 created as a result of nursing home negligence. Now, they  
4 may not agree that the facts of every case are exactly as  
5 we've contended, but they have agreed with respect to every  
6 single client of mine.

7 And, by the way, there are hundreds more. This  
8 case was filed in Georgia, but this case belonged in  
9 Florida. Most of the victims are Floridians. And these  
10 transfers occurred -- let me say, Your Honor, in the state  
11 of Florida we have something called Chapter 400.024 and it  
12 requires patients or claimants like mine to get a notice  
13 when a CHOW is filed out, when there's a change of  
14 ownership. It's more than passing strange that 101  
15 claimants and their lawyers at 17 law firms across the state  
16 of Florida didn't get a single notice when McDermott Will &  
17 Emery and their 282 clients did all these transfers. Now,  
18 that to me is not an accident; that's a plan. And that's  
19 why I think that these claims against non-debtors should be  
20 brought somewhere.

21 Now, if between now and August 13 or now and the  
22 time there's a sale, or now and the time there's  
23 confirmation, the creditors committee wants to intervene in  
24 this adversary proceeding, great. They've got the tools,  
25 they've got the power, they've got the carve-out. By the



1 way, I don't need a carve-out. We're happy to go, leave  
2 these cases and leave our claims and go to Miami. We don't  
3 want to be diluted by whatever goes on in this case. This  
4 is a party for 282 but the caterer only got orders for 43.  
5 There's 43 OPCOs, 282 debtors, this is not my sort of party.  
6 So, we're happy to go elsewhere. Our debtors, those dogs  
7 won't hunt. And not only that, there is public policy  
8 considerations that relate to how did we get here? Why are  
9 my clients up here asserting claims?

10 So, when we talk about -- and then as far as an  
11 imminent risk, Your Honor, there's -- as far as our  
12 bankruptcy analysis, the only reason that we have not taken  
13 action and filed motions previously with Your Honor is that  
14 we're waiting for their filings. Now, we've got some.  
15 We've got bankruptcy schedules, state of affairs filed --  
16 apparently a plan was filed while I was checking in last  
17 night. I haven't seen it yet. But we anticipate doing  
18 things.

19 Now, what I think Your Honor is exactly -- and  
20 what the debtors are correct about is these first several  
21 accounts, they are garden variety property of the estate.  
22 We understand how that works. And we may file a motion at  
23 some point in the next few days seeking authority. And  
24 counsel says it's not relevant. It's somewhat relevant.  
25 It's relevant to the four prongs for injunctive relief. If

1 we seek relief, then we've got to say, debtor, will you  
2 bring this claim? Creditors committee, will you bring this  
3 claim? Is there a reason why you're not? Are you  
4 investigating it?

5 Now, once again, Your Honor, I'll say if the  
6 creditors committee wants to investigate this, great.  
7 They're separate, they were not part of it. I have to say  
8 McDermott Will & Emery are very capable counsel. I don't  
9 mean this in any personal way. But they were in this case  
10 months prior to the transfers that we were scrutinizing, and  
11 now it really does all match up to us. So we think it's up  
12 to the creditors committee to determine whether they wanted  
13 to either intervene in Miami or interview -- intervene in  
14 our adversary proceeding here, or they can ask you for  
15 further relief, or we can ask for further relief because,  
16 quite frankly, the likelihood of success on the merits based  
17 upon what I'm seeing -- when counsel says they filed a plan  
18 last night, I don't think a sale motion or anything else  
19 goes directly to my clients or to their debtors. So that's,  
20 I think, where we are.

21 With all that having been said, Your Honor, I do  
22 want to impress upon you I have been consistent from the  
23 petition date forward. We haven't filed a paper; we haven't  
24 asked for -- we served discovery prepetition, but we haven't  
25 asked for responses. We've told Mr. Diaz' firm we're not

1 going to default you. And that's for all the right reasons.  
2 So, an injunction is not necessary. We've said that we  
3 won't. I hope that answers Your Honor's questions and we  
4 could go on with 101 stories and that doesn't count the  
5 lawyers who are calling up saying, hey, we hear that they've  
6 filed in Atlanta. That doesn't count any of them. But I do  
7 want Your Honor to know when this case is over and those  
8 remaining OPCOs are transferred, based upon the way these  
9 cases go, two, maybe three years from now, there'll be a  
10 whole new set of victims, the same assets, the same  
11 operating facilities will be owned by another layer in a  
12 shifting shell game that has been going on for several  
13 years. I know it because I chase these around Florida for a  
14 living. Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. ANTHONY: Your Honor, (indiscernible) wait  
17 until after the debtors -- I know we haven't filed papers,  
18 but we may have a few comments on reviewing (indiscernible).

19 THE COURT: Okay.

20 MR. ANTHONY: If we can allow debtor's counsel now  
21 to do so --

22 THE COURT: Okay, that'd be fine.

23 MR. ANTHONY: Thank you, Your Honor.

24 MR. BULL: I think you might need to file a motion  
25 to intervene to be able to speak in the adversary.

1 MR. ANTHONY: Well, Your Honor, can we consider  
2 this a verbal motion for everything. We would  
3 (indiscernible) the creditors committee to intervene in this  
4 adversary.

5 And if not, Your Honor, counsel for the debtors  
6 took the opportunity to provide a status update and then if  
7 we could have a sustained right then I can add it to the  
8 status update. However you want to proceed, Your Honor.

9 THE COURT: All right. Why don't you go ahead  
10 first?

11 MR. BULL: Okay, thank you, Your Honor. Mr.  
12 Anthony made a lot of misstatements, made a lot of comments  
13 that don't relate to this motion, although at the end he did  
14 concede that the majority of his claims belong to the  
15 estate.

16 Turning to one thing that he said, that the  
17 scheduling of the motion was unnecessary, I think it's good  
18 to talk about how we got here. We did have discussions with  
19 Mr. Anthony for weeks, if not months, trying to reach a  
20 consensual stay and have no void in this proceeding, and we  
21 gave him a copy of our draft motion papers. We tried to  
22 work with them, and he told us he wouldn't move forward,  
23 similar to what he said today and in his papers, but he  
24 wouldn't agree to a stay. And he wouldn't agree to move the  
25 non-debtors' deadlines to respond to the complaint. So,

1 that left the non-debtors in a bind, and it was untenable  
2 because there's no certainty without that deadline being  
3 moved. And so that's why we actually filed these papers on  
4 a Sunday, because that Sunday was June 30th, which was the  
5 deadline for the non-debtors to respond to the complaint.  
6 So, that's why this was necessary and that's why we're here.

7 He talked a lot about Mr. Diaz. Mr. Diaz is a  
8 lawyer for the debtors. He's only a lawyer. He's not an  
9 officer or a director for the debtors. But the focus on  
10 Diaz I think proves our argument that any discovery into Mr.  
11 Diaz, any document discovery, any deposition of Mr. Diaz --  
12 he's a lawyer for the debtors. The debtors will have to be  
13 involved in it. The debtors have to protect their privilege  
14 or risk it being waived. They have to be heavily involved  
15 in that.

16 And on the claim for fiduciary duty, you know,  
17 reading that claim, we struggled a bit with what it meant in  
18 the complaint, but I think what it's saying is that Mr. --  
19 and what Mr. Anthony said today is that Mr. Diaz owes a duty  
20 to the creditors because of his supported purported position  
21 at the debtors because they're insolvent. I think that's  
22 what he's saying. And so if that's true, that's an estate  
23 claim cause of action. That's a quintessential estate  
24 claim.

25 And then I think Mr. Anthony alluded to Purdue --

1 the Supreme Court's decision in Purdue prohibited the  
2 permanent injunction of third-party claims but did not  
3 prohibit the temporary injunction of third-party claims.  
4 And the PI in Purdue remains in place. It's undisturbed  
5 despite that decision. Purdue doesn't undermine the 362(a)  
6 automatic stay, and Purdue doesn't undermine the Court's  
7 ability to issue a preliminary injunction under 105(a) to  
8 temporarily stay third party claims. Unless Your Honor has  
9 any more questions..?

10 THE COURT: Not...

11 MR. ANTHONY: Your Honor, can I add one thing  
12 (indiscernible) --

13 THE COURT: You may.

14 MR. ANTHONY: In late June, I emailed Mr.  
15 Sifuentes from Mr. Diaz' office and said, under no  
16 circumstances would I seek a default or ask him to respond  
17 to discovery for so long as this Court has not ruled or I've  
18 gotten a greenlight from all counsel of record for the  
19 debtor, the creditors committee and even Mr. Diaz' office.  
20 So, that is just wrong and I'm happy to file the email of  
21 record, if needed. I also want to say, Mr. --

22 THE COURT: I don't need any more emails filed  
23 really.

24 MR. ANTHONY: Very well, Your Honor. The other  
25 thing is Mr. Diaz is cloaked apparently with some -- or they

1 seem to cloak him with some sort of a stay. But the truth  
2 of the matter is, although estate assets apparently of the  
3 OPCOs are being used to compensate Mr. Diaz, he hasn't  
4 bothered with a 327(e) application. And if he did, then we  
5 would find out whether I'm wrong or right regarding his past  
6 or present positions with the debtor or with the debtors or  
7 with other related business entities. The truth of the  
8 matter is if they keep saying that he works for Synergy but  
9 he keeps doing work for the debtors, it may be that he's  
10 hopelessly conflicted. We've been very surprised over the  
11 last three months while we try to assemble information that  
12 we certainly couldn't have gotten by April 22nd when we  
13 began the Miami case -- we've been very interested in those  
14 disclosures. We've been waiting for an application because  
15 he's certainly in the budget. \$600,000.

16 So, if they're intent on thinking about 105(a)  
17 with Mr. Diaz, they should also be interested in thinking  
18 about 327(e) and filling out that affidavit.

19 THE COURT: So, let me ask you something. You  
20 were talking about continuing this matter for some period of  
21 time.

22 MR. ANTHONY: Yes, sir, Your Honor.

23 THE COURT: For some purpose. It seems to me that  
24 the debtors are in a -- we'll call it a critical period.

25 MR. ANTHONY: Yes.

1 THE COURT: And I believe Mr. Simon gave us all a  
2 nice summary of sort of all the things that are going on in  
3 this case and when all that stuff is likely to conclude.  
4 Why can't this just sit still until then?

5 MR. ANTHONY: It can. And, Your Honor, that has  
6 been my very consistent -- I think the creditors committee  
7 knows because the creditors committee counsel, I'm under  
8 their tent but I also have my own client -- but the  
9 representative on the committee, John Herschkowitz, and I  
10 have spoken with the creditors committee and we've assured  
11 them and Mr. Morris that our goal is not to fire up the  
12 Miami case carelessly, but our goal may very well be to  
13 either ask the creditors committee to intervene or see what  
14 the creditors committee is getting by the way of cooperation  
15 with the debtors or the OPCOs.

16 We certainly -- once the adversary proceeding was  
17 commenced, we thought very seriously about saying, hey, Mr.  
18 Simon, it's time for Rule 26. It's time for us to do some  
19 discovery because, frankly, we don't buy your injunction  
20 argument. Rather than do that, we sat even in the case --  
21 even in this adversary proceeding and tried to give them  
22 some time to negotiate, some time to think through things,  
23 some time for us to wait for the bankruptcy schedules to be  
24 filed to see whether or not the financial advisors for the  
25 committee and the creditors committee counsel could make



1 some progress on these questions.

2 But, Your Honor, it's clear we've hit a nerve, and  
3 the nerve is that the OPCOs may be able to reorganize but  
4 our debtors cannot. They are dead in the water. The only  
5 thing they have is claims and those claims apparently are  
6 pretty important to Equity, they're pretty important perhaps  
7 to Omega as well because in all honesty, Your Honor, these  
8 transfers could not really have occurred given what we know  
9 about the mass release agreement and everything, if it  
10 weren't for the fact that Omega gave the nod as well.

11 All of these things -- and God knows, these  
12 typically -- I don't know because we haven't done discovery  
13 -- but typically these SNIFs continued to operate in the  
14 name of the prior entity for quite some time afterwards, and  
15 we'd like to know what is that? What's going on there?

16 So, these are all Chapter 7 debtor type issues,  
17 and we don't really want to be -- at this point, the idea of  
18 our claims being rolled up in the sale of OPCOs is very  
19 troubling and we just wanted to see it. So, we're learning  
20 with the Court and, candidly, nobody was obligated to share  
21 this information in the Miami case so we're accomplishing a  
22 lot just by getting to August 13th and reading what they  
23 filed.

24 THE COURT: Okay. So, the injunction that was  
25 proposed or it's part sort of recognition of the automatic

1 stay and part injunction, I think -- I'm pretty sure I  
2 recall -- even as requested by the debtors, is intended to  
3 extend either through the confirmation of a plan or the  
4 dismissal of a case. You mentioned that you're considering  
5 requesting dismissal of your various --

6 So, again, how does the injunction impair you one  
7 way or the other?

8 MR. ANTHONY: Well, Your Honor, most importantly,  
9 we don't want any findings of fact or conclusions of law  
10 that would be required under Rule 65(d) that there's any  
11 likelihood of success on the merits, if there are any public  
12 policies. All the public policies militate in favor of my  
13 clients. They're victims of the careless uninsured behavior  
14 that's gone on all across the state of Florida and  
15 apparently some other states. But --

16 THE COURT: Well, you might've avoided all that if  
17 you had just consented to this, right?

18 MR. ANTHONY: Well, Your Honor, I don't think that  
19 those were the terms. And so why I would like to come back  
20 is because at some point between now and August 13, we may  
21 be seeking additional relief. We'll certainly want a Rule  
22 26 conference so that we could do the discovery necessary to  
23 determine whether or not we should really be saying let's  
24 dismiss or convert these cases and at the same time lift  
25 stay to the extent required. But the claims that they are

1 not pursuing, the claims that I have asserted -- I think we  
2 know the debtors aren't going to pursue them. They've got  
3 them up as part of the --

4 THE COURT: I don't know if you read their reply.

5 MR. ANTHONY: I'm sorry, Your Honor?

6 THE COURT: I don't know if you read their reply  
7 or have looked at other aspects of the docket in this case,  
8 but they do have an independent director who they say is  
9 looking at these claims among others and, in fact, has been  
10 authorized to hire his own law firm in that regard.

11 MR. ANTHONY: Well, Your Honor --

12 THE COURT: So, aren't we jumping the gun here  
13 saying the debtors aren't going to pursue these claims?

14 MR. ANTHONY: I don't think that we are jumping  
15 the gun because the debtors are represented by the same law  
16 firm that was counsel when these transfers were occurring.  
17 I will say that, although Mr. Simon had objected to the  
18 creditors committee speaking because they haven't appeared  
19 in this adversary proceeding, the creditors committee may  
20 have a different perspective and I'd certainly like to hear  
21 it. Because when you're -- if the independent director for  
22 282 companies reaches a conclusion that benefits the OPCOs  
23 and contemplates either a release, or a stay, or anything  
24 else that pertains to the debtors corresponding to my  
25 claims, you know, I think that that is fraught with

1 conflicts that cannot possibly be overcome.

2 There are two sets of debtors in this case, there  
3 are OPCOs, there are divescos. We understand that the OPCOs  
4 need money, so they borrow money from their landlord, they  
5 borrow money from an insider. And what do they want in  
6 return? These lenders want a release. But that release  
7 only comes from my clients' debtors. I'm not so thrilled  
8 about the idea of --

9 THE COURT: Your clients aren't the only creditors  
10 in this case, you know.

11 MR. ANTHONY: No, my clients are the major  
12 creditors in the debtors' cases that they have claims  
13 against. I think that when we talk about -- and, Your  
14 Honor, you're exactly right, the dilution principle is at  
15 issue here. There are 282 companies and the debt of 282  
16 companies but there's only 43 entities that have assets to  
17 sell in an asset sale. That's what makes this case -- these  
18 jointly administered 282 cases so untenable.

19 We don't want to stick around for a 5 percent  
20 distribution. We'll take our chances elsewhere. And the  
21 only question has been how and when to ask Your Honor. And  
22 the reason why we haven't been anxious to say what we'll do  
23 other than we're going to ask the judge when it's time to  
24 ask but we're not going to take any further action -- the  
25 only reason we've done that is because we don't know what to

1 do yet. We've waited for filings; we've waited to see what  
2 the creditors committee is going to do. And we've very  
3 thoughtfully and deliberately done nothing. It's not that  
4 we're kicking the can; it's that we're quietly reading,  
5 quietly researching.

6 At the point in time that we filed the complaint,  
7 we couldn't match up the facilities with the current  
8 operators. We needed -- my clients and the 17 law firms  
9 that acted as the board of directors for the business entity  
10 that brought the lawsuit in Miami, they said go ahead and  
11 file the lawsuit now, do discovery and we'll find out who's  
12 operating them. Well, now we have a pretty good idea as to  
13 who's operating them. Counsel says we're wrong, and who am  
14 I to disagree with him about the proposition that a sister  
15 of LaVie owns the business entities that are transferees?  
16 If we did discovery, we'd know the answer to that. Maybe I  
17 wouldn't be here. But it'll be discovery in the adversary  
18 proceeding, nonetheless.

19 And we certainly would love to have the creditors  
20 committee intervene. I've accomplished a lot, if that's all  
21 that comes out of this.

22 THE COURT: Yeah, maybe you have bankruptcy as a  
23 process of disclosure, right?

24 MR. ANTHONY: Yes, sir, Your Honor.

25 THE COURT: And you'll learn a lot that you

1 wouldn't necessarily have learned in action with your  
2 lawsuit but being on the creditors committee and just  
3 generally being a creditor of the cases. Obviously,  
4 there'll be a 341. Your examination there takes too long,  
5 maybe you have a 2004 examination. The debtors have already  
6 filed a raft of information that I think maybe makes clearer  
7 than the public record would have --

8 MR. ANTHONY: Yes, sir.

9 THE COURT: -- who owns what and what does what.  
10 They filed lots of declarations about how they operate so...

11 MR. ANTHONY: And that's the plus. That's why  
12 when I say -- I'm not really saying kick the can; I'm saying  
13 by August 13 I have a lot of reading to do just that -- and  
14 from our electronic devices into the courtroom -- but my  
15 understanding is there's a plan waiting for me and a reply  
16 waiting for me that I didn't get to yesterday.

17 And so time will be spent very wisely. And is it  
18 an injunction? I think not. Or a TRO. But I am saying,  
19 consistent with that I've said for the last three months,  
20 that we anticipate that no action will be taken without an  
21 order of this Court, other than in the context of the  
22 adversary proceeding or any new contested matter that might  
23 be commenced. And obviously we're ready for Rule 26 in this  
24 adversary proceeding. And then the plan would be to take a  
25 brief deposition of each debtor, a brief deposition of each

1 of the non-debtor defendants figure out what's going on  
2 here.

3 If in the meantime, the creditors committee either  
4 intervening in this adversary or in their ongoing dialogue  
5 with the debtor finds some other way to do it -- 2004 exams  
6 or something like that -- it may be that we can ride the  
7 creditors committee's coattails. These are the options.  
8 But I do -- I think it's important that Your Honor to know  
9 that this case is not some business case that just started  
10 because somebody couldn't pay their bills. The method of  
11 these cases, at least in the state of Florida, is don't  
12 carry enough insurance, provide minimal service, wait to get  
13 sued, have your CHOW application --

14 THE COURT: Let me ask. So, what's enough  
15 insurance? I saw that in your pleadings and I'm curious  
16 about that.

17 MR. ANTHONY: These SNIFs generally carry the very  
18 most minimal insurance. And, Your Honor, I think --

19 THE COURT: Well, what is that?

20 MR. ANTHONY: -- I think it's about \$10,000.

21 THE COURT: Okay.

22 MR. ANTHONY: So, the claims that we have, I mean,  
23 it's very large claims that come out of these cases. Not --  
24 this specific set of bankruptcy cases or these 101 clients.  
25 These were all negotiated down very aggressively, very

1 heavily. We're not arguing about the deals. In fact, the  
2 lawsuit was commenced in Miami in part to adjudicate, hey,  
3 these are enforceable settlements, you've agreed to the  
4 amount and here they are. And that hasn't been disputed.  
5 But these claims can be very large, and the level of care is  
6 not...

7 You know, the AARP every other year does a poll  
8 nationwide amongst all the doctors for the elderly, and it's  
9 shocking to me that a state with as much money, wealthy  
10 retirees as the state of Florida would be ranked 43rd. And  
11 it is because of all of these bankrupt nursing homes that  
12 file in states other than Florida and just charge huge  
13 amounts of debt.

14 Now, let's be clear. The trade debt will follow  
15 the newco. When the asset sale occurs out of 363 with  
16 whatever requirements are needed for a good faith purchaser,  
17 those assets will transfer, and a lot of the trade debt will  
18 be picked up in one way or another. People are going to  
19 keep their jobs and it's going to be business as usual. The  
20 only folks who get really stuck holding the bag are the  
21 victims of the horrible service.

22 We'll be back. It won't be the same people; it'll  
23 be the same class of people, the same class of claimants for  
24 the same horrible service. One of them is my dad and he's  
25 my next stop in St. Augustine. Thank you Your Honor.



1 THE COURT: Okay. So, one more thing. So, I'm  
2 sort of perplexed. I was going to ask you a question but  
3 then you said you don't really intend to pursue these guys.  
4 I was going to ask if no injunction were entered, but a  
5 bunch of these claims are all owned by the debtor. What  
6 could you actually do I the Florida lawsuit? Because it  
7 doesn't seem -- there's nothing obvious to me that you could  
8 actually do with the claims that aren't owned by the debtor,  
9 if there are any.

10 MR. ANTHONY: If the debtor --

11 THE COURT: I don't know how you can take a  
12 deposition or conduct any actual document discovery without  
13 somehow advancing a claim against the debtor or that's owned  
14 by the debtor. So, in that circumstance, I don't know --  
15 again, and I hear you saying you're not going to proceed  
16 against them, but I don't know how you could proceed even if  
17 I wasn't here.

18 MR. ANTHONY: So, if there were no bankruptcy  
19 case, obviously I could proceed --

20 THE COURT: Well, sure, yeah.

21 MR. ANTHONY: We're making a lot of progress with  
22 that.

23 THE COURT: But if nobody had asked me for a stay  
24 -- but given the nature of the claims you've asserted --  
25 and, again, as you pointed out, it's all about one course of

1 conduct all conducted by the debtors and the people they  
2 transferred these assets to -- I don't know how you conduct  
3 any discovery about anything that someone wouldn't assert  
4 either advances a claim against the debtors or advances a  
5 claim that's owned by the debtors.

6 MR. ANTHONY: If the concern is that it would  
7 impact the debtors, claims against the affiliates of LaVie  
8 or the parent of LaVie, Synergy, I don't think that that  
9 argument holds water. Because to say that you have  
10 indemnification claims or something like that, that's at  
11 best a zero sum game. In other words, I've got 9.5 million  
12 of unpaid claims on 10.5 million of settlement agreements.  
13 Mr. Diaz made his negotiations, and they made \$1 million  
14 worth of payments, and here we are with the rest.

15 And if I hit in Miami \$9.5 million, then for sure  
16 our claims won't be in this case. Now, they say they'll  
17 have \$9.5 million worth of indemnity claims, but why would  
18 an indemnitor be obligated for the direct liability of our  
19 non-debtor targets? It absolutely would not be. I mean,  
20 that's Florida law. When a tortfeasor commits an  
21 independent --

22 THE COURT: Set aside the indemnity issue. What  
23 discovery could you possibly take?

24 MR. ANTHONY: I think we could take discovery --  
25 we could take all the discovery directly related to the

1 liability of Synergy, Diaz, Aspire and Inspire.

2 THE COURT: Which all relates to claims that are  
3 either owned by the debtor or asserted against the debtor.

4 MR. ANTHONY: Your Honor, I don't think that they  
5 are. In fact, we saw, in our preparation for today's  
6 hearing, we saw a very similar argument raised by Mr. Simon  
7 for something called Gulf Coast, another nursing home  
8 bankruptcy with similar properties allowed for claimants.  
9 And the idea that somehow the debtor is the only source of a  
10 claim when the actual conduct was misconduct of the parent  
11 company and of Mr. Diaz toward my specific clients, that's  
12 different.

13 And, in all honesty, it helps the estate for them  
14 to pay us. Assuming theoretically that subcon actually  
15 occurred here, which nobody filed a move for, that's one of  
16 the things that we've been waiting for for the last three  
17 months. If you're going to substantively consolidate, I  
18 want to see how that would look. But to be perfectly  
19 honest, with respect to the specific debtors that we're key  
20 to, those 48, if we get paid by somebody else, the estates  
21 benefit. There's no doubt about it.

22 THE COURT: Except for the indemnity.

23 MR. ANTHONY: But the indemnity is a canard. Your  
24 Honor, what's really going on is that there is no right of  
25 indemnity -- if there is a contractual right of indemnity,

1 that's not going to be enforceable. This Court would  
2 preside over that. That'd be core. So, how could it be  
3 that Your Honor would allow an indemnity claim to be  
4 enforced by a tortfeasor whose direct tort against my  
5 clients triggered their own proper liability?

6 At the very best, it would be neutral. You're  
7 just changing creditors. But I can't imagine that that  
8 would be -- the contract we stipulated go ahead and  
9 introduce the declaration because all those documents show  
10 pretty clearly that you could not, under Florida law,  
11 enforce that against these debtors. We'll take this whole  
12 thing off the Court's hands. I mean, the only thing -- to  
13 point to the elephant in the room -- is that the debtors,  
14 the principals of the debtors and probably the landlords for  
15 the debtors or the landlord for the debtors, Omega, they  
16 want that release. The release is more important than  
17 whatever those 43 OPCOs are. The releases are more valuable  
18 than those OPCOs. And we believe that so much, we'd be  
19 delighted to drop our claims in these cases and just pursue  
20 the claims against the non-debtors. We'll get 100 cents on  
21 the dollar that way, rather than 5 cents hanging out with  
22 the creditors committee.

23 And we've thought through it. We don't need any  
24 carve-out, we don't need any money. We can do this. I do  
25 this all day long. This is a great big, huge version of

1 what we chase around these shifting shell games in  
2 healthcare.

3 THE COURT: Okay, thank you.

4 MR. ANTHONY: Thank you, Your Honor.

5 MR. BULL: Your Honor, may I address that for a  
6 moment?

7 THE COURT: You can.

8 MR. BULL: Thank you. Mr. Anthony pursuing his  
9 claims doesn't help the estate. The debtors have to be  
10 involved and the non-debtors are indemnified. And whether  
11 those identification claims are successful or not, the  
12 prosecution of them adversely affects the estate. And, as  
13 Your Honor pointed out, the claims that are brought against  
14 the non-debtors, the claims that are not purportedly in the  
15 property of the estate, those claims are unfair trade  
16 practices, civil conspiracy, unjust enrichment. All those  
17 claims revolve around the theory that the debtors  
18 intentionally missed settlement payments and moved assets  
19 away from the plaintiffs.

20 All those claims revolve around the debtors'  
21 conduct. There's no way to extricate those claims from the  
22 debtors. Thank you.

23 THE COURT: Thank you.

24 MR. LAWALL: Good morning, Your Honor --

25 THE COURT: And now a status update from the

1 creditors committee.

2 MR. LAWALL: Your Honor, the committee -- Fran  
3 Lawall, Troutman, on behalf of the committee. The committee  
4 has not yet made a decision whether it's going to intervene  
5 either in this action or in the Florida action. More  
6 importantly, however, I think Your Honor is getting a flavor  
7 of the complexity with respect to these cases. And with 282  
8 debtors, only 43 operating companies, clearly there's an  
9 issue as to where the other 240-some-odd credit estates are  
10 going to recover. And so these potential causes of action  
11 need to be investigated, it needs to be transparent. And  
12 unfortunately --

13 THE COURT: And I assume you're doing that.

14 MR. LAWALL: We are, Your Honor. We have a couple  
15 of concerns that we want to raise with Your Honor but, yes,  
16 we are absolutely pursuing that. We recognize, now that a  
17 plan has been filed, we have some concern with respect to  
18 that plan in part. If Your Honor looks at the plan, you'll  
19 see, as Mr. Simon has indicated, it is a placeholder, it is  
20 going to be an iterate process. We appreciate that. But we  
21 do have concerns that that document going out on notice at  
22 this point, given the cost and the complexity of giving  
23 notice, given how vague that it is, it's ultimately going to  
24 waste the estate's resources for purposes of noticing a  
25 document where, if there are going to be substantial

1 changes, probably are going to have to be re-noticed anyway.

2 The other concern, Your Honor, and I recognize  
3 we're operating --

4 THE COURT: Can we notice a date for a disclosure  
5 statement hearing without a disclosure statement or without  
6 sending out a disclosure statement?

7 MR. LAWALL: I don't see how, Your Honor, that's  
8 the problem. And so it becomes circular in terms of -- if  
9 you look at the document, the document is incredibly vague,  
10 understanding given the premature nature and the early  
11 nature of this case. But right now, that document -- the  
12 only thing that really jumps out at you at this point is  
13 that there are releases in there for many of the secured  
14 creditors. But there's no obvious source of funding for  
15 anyone other than potentially this sale, which, if you look  
16 at it, the argument's going to be it's going to pay that  
17 waterfall of secured creditors as well as the 42 operating  
18 debtors. But you're still left with the other 240 debtors  
19 that there is no obvious source of payment at this time.

20 THE COURT: Right. Or it proposes a sale with  
21 some unidentified equity source.

22 MR. LAWALL: Right, Your Honor. I can't imagine  
23 anyone stepping into the equity of these debtors given the  
24 debt load that's there. It's just unfathomable. And I  
25 recognize why on a theoretical basis someone might. At this

1 stage of the game, it's so lacking in terms of specifics  
2 that, again, we're just raising the concerns given the  
3 limited availability of funds in this case. Sending it out  
4 on notice right now may be a fool's errand as opposed to  
5 trying to advance some of what we're trying to do at this  
6 point, including the investigation.

7 And with respect to the investigation, there are  
8 some troubling facts here that need to be further pursued.  
9 And we are trying to do so. The debtor has fully loaded the  
10 data room with lots and lots of documents, but there are  
11 still a lot of issues that yet need to be investigated  
12 including some of the transferees, including some of the  
13 non-debtor parties, including some of the affiliates with  
14 respect to the non-debtor parties. There's a lot to be done  
15 there but we're working on it at this stage.

16 Your Honor raised the issue with respect to the  
17 independent director. That's terrific. That's great that  
18 there is an independent director, but we do have some  
19 concerns that any law firm that is advising the independent  
20 director should have nothing to do with the prior  
21 transactions. There shouldn't be any fee billing, there  
22 shouldn't be anything. It should be completely isolated.  
23 So, to the extent that there's going to be reliance with  
24 respect to any determination the independent director makes,  
25 it should be based upon independent counsel. Counsel who



1 has not been involved in this case.

2 THE COURT: Okay. We've already approved counsel  
3 for the independent director, haven't we?

4 MR. LAWALL: We have, Your Honor, but again we  
5 want to make sure that the independent director is not  
6 relying upon any other counsel. And we have reason to  
7 believe that that may be going on.

8 THE COURT: Okay.

9 MR. LAWALL: Second, with respect, Your Honor, to  
10 Mr. Diaz, we don't know that much about him but as counsel  
11 has now indicated, he is counsel for the debtor. We have  
12 been trying to work with Mr. Simon, who's been cooperative  
13 with us on these issues, but we do believe that Mr. Diaz  
14 should file a retention application in this case and fully  
15 disclose all of the hats that he is wearing so that everyone  
16 has complete transparency.

17 THE COURT: He wasn't on the ordinary course  
18 professionals?

19 MR. LAWALL: He's not, Your Honor. The way it's  
20 working right now is that he's part of the Synergy retention  
21 and, if my memory serves, there's about \$600,000 set aside  
22 for the Diaz firm. We have no reason to disparage Mr. Diaz  
23 at this point but just given the significance of his  
24 participation, we think there should be full and complete  
25 transparency. From the committee's perspective, all we want

1 is full and open transparency and time enough to do the  
2 investigation necessary to assure all the claims, whether  
3 there are causes of action there or not, that they know --  
4 whatever the recovery's going to be, five cents, 50 cents,  
5 100 cents, they can be comfortable knowing it's been fully  
6 vetted.

7           Given the timeline that we currently have right  
8 now, it is really compressed with this plan. We get it.  
9 We're working on it. We may require additional time; we  
10 don't know yet. But I'm sure the debtor will cooperate with  
11 us in terms of scheduling interviews and whatever is  
12 necessary, and probably 2004s. We are preparing formal  
13 discovery at this point with respect to some parties. We  
14 hope to do investigations through interviews and then if we  
15 have to do 2004s, we will.

16           This is a long way of saying, Your Honor, the  
17 committee understands the concerns with respect to the  
18 Florida claimants. We don't think that they are -- we think  
19 there could be substance there, we believe, and we are  
20 investigating them. We will cooperate with them. Whichever  
21 way you rule, we are going to continue to go down our path  
22 so Your Honor can be comfortable that we're doing that.

23           But, again, these are really important issues, and  
24 they may be the only source -- and there are disconcerting  
25 facts here, Your Honor, that need to be looked at closely in

1 connection with some of these transfers. And we will vet  
2 them and then we'll report back to the Court and the rest of  
3 the parties.

4 THE COURT: Okay, very good.

5 MR. LAWALL: Thank you.

6 THE COURT: You mentioned that this case is moving  
7 along quickly, and I think that's true. I've taken to  
8 heart, and I think it's also true what Mr. Simon said when  
9 we started here, which is that these are nursing homes.  
10 Nursing homes are not going to do well in bankruptcy for a  
11 long time. But this process needs to be (indiscernible) the  
12 nature of the business they conduct. We need to get this  
13 done as quickly as possible.

14 MR. LAWALL: We agree, Your Honor. In fact,  
15 that's why, if you'll notice, the committee has supported  
16 the sale process. These are going down two different paths.  
17 The sale process is moving forward. We have reached our  
18 peace with the debtor at this stage on the sale process. We  
19 agree with you completely. These assets will not get better  
20 with age. How they actually end up transacting is another  
21 issue. I mean, there are issues with respect to the Omega  
22 leases and the other secured debt. We'll work that out once  
23 -- assuming we find a buyer. But we are not trying to slow  
24 down that sale.

25 This is really a separate path here, Your Honor,

1 in terms of the causes of action, that we need to make sure  
2 that the time and possibly the resources if they're  
3 necessary to investigate them. If the debtor's going to  
4 insist on these entities staying in Chapter 11 -- and,  
5 again, there's almost 240 non-operating entities that are in  
6 bankruptcy right now -- if they're going to insist in  
7 keeping them in Chapter 11, then they need to be  
8 investigated, they need to be vetted so that everyone has  
9 comfort with respect to whatever is there or not there.  
10 That's the only point.

11 THE COURT: Right. We have 282, but then it's not  
12 that there are 240 former operators because a number of the  
13 other -- in the other basket are administrative companies  
14 and do various things that are not -- that don't own a SNIF,  
15 which I've I now learned as a term.

16 MR. LAWALL: Right. That's correct, Your Honor.  
17 There are probably administrative entities in there that are  
18 likely not doing any business at this point as well. Now,  
19 granted, there may be some in there but at this point,  
20 probably the lion's share of them are shells and non-  
21 operative. But that's part of the investigation.

22 THE COURT: Very good.

23 MR. LAWALL: Thank you, Your Honor.

24 THE COURT: Thank you for the update.

25 MR. SIMON: With Your Honor's permission, may I

1 just have two minutes?

2 THE COURT: You may.

3 MR. SIMON: Thank you, Your Honor.

4 THE COURT: I've got all morning.

5 MR. SIMON: Okay, I don't need all morning.

6 There's been an enormous amount said today, a lot of facts  
7 with no evidence, a lot of incorrect facts, a lot of  
8 misrepresentations from the parties. I'm not going to go  
9 tit-for-tat.

10 THE COURT: What's evidence in this proceeding so  
11 far is the statement by the -- our turnaround fellow and  
12 that's all the evidence and the documents attached thereto.  
13 So, I've heard a lot of things --

14 MR. SIMON: Mr. Jones.

15 THE COURT: -- but most of the rest of it, well,  
16 none of the rest of it constitutes evidence for the purposes  
17 of this hearing.

18 MR. SIMON: Thank you, Your Honor. And, again,  
19 Mr. Jones has been clamoring to sit on the witness stand but  
20 one of these days you'll hear directly from him. Obviously,  
21 there's a lot of work to do but there is limited liquidity.  
22 We have a DIP that was entered with the consent of the  
23 creditors committee. It has milestones. We're complying  
24 with those milestones. We've now noticed both a sale  
25 hearing -- and we will notice a disclosure statement hearing

1 50 days from yesterday, which is when we filed it. More  
2 than enough time. Obviously, plan confirmation to the  
3 extent it's scheduled at that time will be done on proper  
4 notice. We continue to collaborate with the creditors  
5 committee. We're now up to 120 diligence requests that  
6 we're working on and literally while Mr. Anthony was  
7 speaking, Mr. Lawall's partner, Ms. Kofsky, emailed us to  
8 schedule another time this afternoon to walk through  
9 additional diligence requests, which we will do. So that  
10 process is ongoing.

11 You're correct, Your Honor, Mr. Decker, who's not  
12 in the courtroom today but was in the courtroom last time,  
13 is the independent manager. He's doing an investigation.  
14 There are discussions with the creditors committee about the  
15 appropriate way to provide them access and collaborate with  
16 respect to information so that they can do their job. That  
17 process is well, well underway and we'll continue to  
18 collaborate with them on that.

19 There's been a lot said about Mr. Diaz. I don't  
20 need to get into it. Mr. Diaz was counsel to the operators  
21 in connection with these issues prior to the petition date.  
22 Those are all stayed. Mr. Diaz' role is with Synergy now.  
23 He's not directly employed or retained by the debtors. But  
24 we're working with the creditors committee. They've raised  
25 concerns, they've asked about 327. We're providing them

1 with additional disclosures, and we'll see where that goes.

2 But we're in constant discussion with the  
3 creditors committee on all the issues raised today. The  
4 issues about divescos, as has been articulated by Mr.  
5 Lawall, the issues about the investigation, the diligence  
6 request, Mr. Diaz' retention. We'll continue to work  
7 through those. And, obviously, if parties or the debtors  
8 file a motion, you know, parties will have an opportunity to  
9 respond on any of those issues and we can be before the  
10 Court, whether it's a motion to convert, whether it's  
11 otherwise. We're trying to do it with as much time, do it  
12 through proper evidence and provide you with the information  
13 you need. None of these issues are before the Court today.  
14 That's all I have, Your Honor.

15 THE COURT: All right. All right. Are we done  
16 with the presentations today?

17 MR. SIMON: I think we're done. We would just --  
18 not to speak for Mr. Bull, but we would seek Your Honor's  
19 ruling or respectfully request that Your Honor enter the  
20 proposed order with respect to the adversary.

21 MR. ANTHONY: And, Your Honor, very briefly. We  
22 would like Your Honor to consider holding everything in  
23 advance until August 13, at which point we can vet further  
24 things. We certainly understand that no further activities  
25 in Miami are anticipated. Your Honor doesn't need to order

1 that. So 65(d), there's -- it's just not in play. Having  
2 said that, Your Honor, the matter's been fully vetted, and  
3 we understand that you'll rule.

4 THE COURT: All right. It's 11:00. Why don't we  
5 take about a 30-minute break? Be back at 11:30. I'll  
6 provide you my ruling then.

7 CLERK: All rise.

8 (Break)

9 CLERK: The court will come to order. Good  
10 morning, Your Honor, today is July 24, 2024. The time is  
11 now 11:56 a.m. We're returning from recess. And for the  
12 record, we are here for the specially set hybrid hearing in  
13 the adversary proceeding for 24-5127 LaVie Care Centers,  
14 LLC, et al., v. Healthcare Negligence Settlement Recovery  
15 Corp.

16 THE COURT: Welcome back, everyone. Apologize for  
17 the little more lengthy delay than I had anticipated, but  
18 ready to deliver my ruling in this matter at this time.

19 Thank you all for your presentations this morning.  
20 Mr. Bull and Mr. Anthony, it's a pleasure to make your  
21 acquaintance and I commend you both for your work this  
22 morning. Mr. Anthony, thank you especially for providing  
23 your client's perspective on these cases and your client's  
24 claims.

25 As a preliminary matter, although I don't think



1 it's an issue raised by Mr. Anthony as a defense, but as the  
2 Bankruptcy Courts in Delaware and Parliament Technologies  
3 and Chicago and Coast to Coast Leasing have recently  
4 correctly held, the Supreme Court opinion in Purdue Pharma  
5 does not prevent this Court from issuing the injunction  
6 requested here.

7 As may already be clear, I don't think it's  
8 possible for Healthcare Negligence Settlement Recovery Corp,  
9 who I'll call HNSRC for the remainder of this talk, to  
10 proceed in any sensible respect with what it calls the Miami  
11 action in its papers without violating the automatic stay  
12 either by prosecuting claims owned by the various bankruptcy  
13 estates of the involved debtors or by prosecuting claims  
14 against those estates. Although I appreciate Mr. Anthony's  
15 representations that HNSRC will not proceed with the Miami  
16 action without taking certain steps first, I don't think  
17 that alone is adequate. I also don't think that continuing  
18 this hearing until the next omnibus hearing date in early  
19 August is adequate either because I just don't think enough  
20 will happen on the various fronts in this case that would  
21 make that date materially different from today.

22 So, in short, I found the defendant's motion is  
23 well taken and should be granted for the reasons I will  
24 outline in the next few minutes and to the extent I'll  
25 describe. Miami action is at its very beginning. The

1 complaint was filed in late April and extensions of time to  
2 respond have been given such that no responsive pleadings  
3 have yet been filed. HNSRC further professes in its  
4 pleadings and here today no desire to proceed with the  
5 action at this time. Consequently, enjoining the  
6 prosecution of this lawsuit would result in little to no  
7 prejudice to the plaintiff.

8 It's undisputed that at least a majority of the  
9 counts in the complaint are property of the estate and,  
10 thus, absent authorizations not in place here today, the  
11 prosecution of them by a party other than the debtor would  
12 clearly violate Section 362(a)(3). The counts in the  
13 complaint in the Miami action are all based on a common  
14 nucleus of alleged wrongdoing by the debtors and the  
15 purported transferees such that any prosecution of any of  
16 the claims would likely constitute prosecution of all of  
17 them in violation of Section 362(a)(1). No way to pursue  
18 any material part of the complaint without advancing all  
19 parts of the complaint has been outlined. And even if a  
20 more limited path could be identified, it would be very  
21 inefficient for all the parties, including HNSRC and the  
22 debtors to proceed with that now and the rest later. And  
23 arguments over whether a particular discovery did or did not  
24 advance the litigation against the debtors or on the  
25 estate's causes of action would certainly proliferate.

1 Certain of the claims are covered by  
2 indemnifications made by some of the debtors providing an  
3 identity of interest between those debtors and the relevant  
4 non-debtors. Because the debtors are also parties to the  
5 Miami action, there may also be prejudice by the prosecution  
6 of their complaint through the application of res judicata  
7 or collateral estoppel. Maybe most importantly, as I  
8 outlined earlier, this case is in a critical period. The  
9 debtors are pursuing both potential sales of substantially  
10 all their assets and a plan. The sales process is presently  
11 set to conclude by the middle of September, and with the  
12 plan now filed, the plan process could wrap up in an only  
13 slightly longer timeframe.

14 So, the next 70 days or so are critical to this  
15 case. Distracting the debtors' officers, directors and  
16 professionals by requiring them to focus in any material  
17 respect on this litigation would result in immediate and  
18 irreparable harm to all the constituencies in this case and  
19 must be avoided. As I just mentioned, the debtors are  
20 pursuing both a sales process of certain of the debtors and  
21 a plan for all of them. Consequently, as far as it can be  
22 assessed at this point in time, the debtors have a  
23 substantial likelihood of success on the merits in the sense  
24 that it is likely that these cases will reach a successful  
25 conclusion.

1 As to the debtors involved in the Miami action,  
2 such a conclusion could also include the prosecution by the  
3 estate representatives of just the type of claims asserted  
4 in the Miami action, with the distribution of the proceeds  
5 of those claims to all creditors, not just HNSRC.

6 All of the causes of action in the complaint are  
7 among the kinds of claims the committee is investigating,  
8 with the deadline for the assertion of some of those claims  
9 in September as well. The plaintiff is on the committee  
10 and, thus, will be participating in the investigation of  
11 these and other claims with counsel provided at debtors'  
12 expense. This is the opposite of prejudice to them.  
13 Although the committee should be given the first chance to  
14 pursue such claim, assuming the debtors through their  
15 independent director do not, which is also not a foregone  
16 conclusion. The equities favor the debtors as the  
17 plaintiffs will suffer little to no harm and the debtors  
18 would be irreparably harmed.

19 The initial delay the Court will impose is  
20 relatively short. The Court will grant the motion and will  
21 enjoin the prosecution of the Miami action through the  
22 earlier of the confirmation of a plan with regard to all of  
23 the debtors that are defendants in the Miami action to the  
24 dismissal of the pending cases against all of the debtors  
25 that are defendants in the Miami action or, three, the end

1 of September. And I'll set a hearing to consider the  
2 continuation of the injunction on September 30, 2024,  
3 assuming that date works for the parties.

4 By that time, the sales and confirmation processes  
5 should be concluded or nearly so, and the committee would  
6 have fully considered what claims they wish to pursue. Any  
7 questions?

8 MR. ANTHONY: Thank you, Your Honor. No  
9 questions.

10 THE COURT: Otherwise, I know the debtor has  
11 submitted a form of order that'll have to be modified a  
12 little bit to accommodate another hearing as well as to  
13 incorporate, for the reasons set forth on the record, with  
14 regard to the decision.

15 MR. SIMON: We will take care of that, Your Honor.  
16 Thank you.

17 THE COURT: You all have a good rest of your day.

18 CLERK: That concludes all matters. All rise.  
19 Parties joining us via Zoom, we're going to end the  
20 conference and stop recording. Have a wonderful day.

21 (Whereupon these proceedings were concluded at  
22 12:03 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  
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Date: August 1, 2024

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