Docket #0401 Date Filed: 09/05/2024

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

In re:	)	Chapter 11
LAVIE CARE CENTERS, LLC, *et al.*[1]	)	Case No. 24-55507 (PMB)
Debtors.	)	(Jointly Administered)
	)	**Related to Docket No. 310**

DEBTORS' PRELIMINARY OBJECTION TO RECOVERY CORP.'S MOTION TO DISMISS OR CONVERT FLORIDA DIVESTCO REORGANIZATIONS

LaVie Care Centers, LLC ("LaVie") and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases, hereby submit this preliminary[2] objection (the "Objection") to *Recovery Corp.'s Motion to Dismiss or Convert Florida DivestCo Reorganizations* [Docket No. 310] (the "Motion to Dismiss") filed by Healthcare Negligence Settlement Recovery Corp. ("Recovery Corp."). In support of this Objection, the Debtors respectfully state as follows:

[1] The last four digits of LaVie Care Centers, LLC's federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://www.veritaglobal.net/LaVie. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

[2] The Debtors engaged in discussions with Recovery Corp. regarding the scheduling of the Motion to Dismiss (which has been agreed by the parties to be heard at the Confirmation Hearing), but Recovery Corp. would not agree to extend the Debtors' objection period accordingly. Therefore, the Debtors file this protective Objection, but reserve the right to supplement the same in advance of any hearing on the Motion to Dismiss.

2455507240905000000000014

PRELIMINARY STATEMENT

1. Although its "Miami Action" is currently stayed, Recovery Corp. still believes that this Court should simply dismiss the "Florida DivestCo Debtors" to allow Recovery Corp. to pursue the Miami Action for the benefit of *its* constituents, and to the detriment of all *other* constituents in these Chapter 11 Cases. As set forth in Bankruptcy Code section 1112(b), such an extraordinary remedy requires compelling justification and is appropriate only upon a showing of sufficient "cause" to do so. But, as further discussed herein, Recovery Corp. fails to provide *any* legitimate justification to merit dismissal or conversion of the Florida DivestCo Debtors other than self-serving conjecture, hyperbole, and misstatements that, at best, allege pre-petition misconduct that warrants investigation in chapter 11 – precisely the facts that the Debtors' independent manager, Mr. James Decker, and the Committee[3] have been, and continue to, investigate. Even if the facts asserted by Recovery Corp. were true (which they are not), they would not demonstrate "cause" for dismissal or conversion. Recovery Corp.'s story, however, is just that: a collective work of fiction and misguided legal theories that falls far short of meeting its requisite statutory burden.

2. Over the course of a meandering 24 pages, Recovery Corp. spends just over one page on the relevant section 1112(b) standard and basis for conversion or dismissal. The remainder delves into a smattering of largely irrelevant or premature topics, ranging from: lecturing the reader on "ever-changing nursing home corporate mazes enrich[ing] themselves with Medicare tax dollars"; to wrongly asserting that Synergy is the parent of the Debtors (it is not); to premature arguments relating to substantive consolidation; to *Purdue Pharma* (despite the Plan not

[3] Recovery Corp. also serves on the Committee, and presumably is well informed regarding the status of the Committee's investigation into these matters.

containing non-consensual third-party releases and currently not even contemplating release of the very claims held by Recovery Corp.), before ending abruptly with reference to an oddly-cited AARP survey. In connection with its sole reference to section 1112(b) in the entirety of the Motion to Dismiss (beginning on page 20), Recovery Corp. asserts that the Florida DivestCo Debtors must be dismissed due to "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." In doing so, it merely points to three categories of purported deficiencies with the Debtors' Combined Disclosure Statement and Plan that (a) are premature, given the current trajectory of the Chapter 11 Cases, (b) highlight Recovery Corp.'s misunderstanding of the terms of the Debtors' Combined Disclosure Statement and Plan, and (c) above all, fail to demonstrate "cause" for dismissal or conversion.

3. *First*, Recovery Corp. points to a purported lack of disclosure in the Combined Disclosure Statement and Plan, stating that it "reveals very little about the Debtors' assets, liabilities, income, expenses, interrelationships, third-party claims, or other key business, financial, and legal attributes." Motion to Dismiss, at 13. If Recovery Corp. has disclosure-related concerns, these issues will be taken up in connection with approval of the Disclosure Statement and/or confirmation, but such issues have no bearing on the appropriateness of dismissal or conversion and fail to establish "cause" under Bankruptcy Code section 1112(b)(4).

4. *Second*, Recovery Corp. argues that substantive consolidation of the Debtors' estates—which the Debtors are not currently seeking—is inappropriate. *See* Motion to Dismiss, at 14. To the extent that the Debtors seek substantive consolidation in connection with confirmation (the Combined Plan and Disclosure Statement itself reserves the Debtors' rights to do so), they will be prepared to make the requisite evidentiary showing to justify such requested relief, and Recovery Corp. will be entitled to respond accordingly. At this stage of the Chapter 11

Cases, the issue is not ripe enough to carry any weight with respect to the Motion to Dismiss, further justifying its denial.

5. *Finally*, Recovery Corp. focuses on—and misrepresents the terms of—the Plan currently on file in these Chapter 11 Cases, baldly asserting that confirmation of the Combined Disclosure Statement and Plan (and subsequent rehabilitation) is "impossible" due to, among other things, the non-consensual third-party releases contained therein[4] and the Debtors' purported lack of good faith. *See* Motion to Dismiss, at 18-19. As Recovery Corp. is well aware, the Debtors are at a critical stage in these Chapter 11 Cases and are preparing to mediate significant case issues before the Honorable Jeffery W. Cavender beginning next week. The Debtors are committed to working in good faith with the mediation parties—which includes Recovery Corp., who will be in attendance at the mediation—to reach global consensus in these Chapter 11 Cases. Following mediation, the Debtors intend to file a revised Combined Disclosure Statement and Plan which will address many of the purported disclosure and confirmation deficiencies enumerated in the Motion to Dismiss. In short, although there is work yet to be done with respect to the Combined Disclosure Statement and Plan, the Debtors' ongoing progress to date clearly demonstrates that there is a clear path to a successful rehabilitation in these Chapter 11 Cases, even for the Florida DivestCo Debtors.

6. In sum, because Recovery Corp. fails, by a very wide margin, to justify the extreme relief it seeks, the Debtors request that this Court deny the Motion to Dismiss and allow the Chapter 11 Cases to continue on their current trajectory towards a mediation and a value-maximizing sale or plan process.

---

[4] To confirm, ***the Plan does not contain non-consensual third-party releases*** and any suggestion to the contrary is based solely on Recovery Corp.'s own misguided assumptions about the Debtors' intentions in these Chapter 11 Cases.

RELEVANT BACKGROUND

I. The Chapter 11 Cases

7. On June 2, 2024 (the "Petition Date"), the Debtors commenced the Chapter 11 Cases by filing petitions for relief under chapter 11 of the Bankruptcy Court in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Court"). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

8. On June 13, 2024, the Office of the United States Trustee for Region 21 (the "U.S. Trustee") appointed the Committee, which includes Recovery Corp. *See Appointment and Notice of Appointment of Committee of Creditors Holding Unsecured Claims* [Docket No. 112]. To date, no trustee or examiner has been appointed in the Chapter 11 Cases.

II. The Debtors' Sale and Plan Process and Mediation

9. On June 27, 2024, the Court entered an order setting forth bidding procedures in connection with the Debtors' sale process (the "Bidding Procedures Order") [Docket No. 177], which set forth a deadline for bidders to submit qualified bids on September 5, 2024, scheduled an auction, if necessary, on September 9, 2024, and originally set the hearing on the Debtors' proposed sale for September 11, 2024 (the "Sale Hearing").

10. On July 23, 2024, the Debtors filed the *Debtors' Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 273] (the disclosure statement portion thereof, the "Disclosure Statement" and the chapter 11 plan portion, the "Plan", and together with the Disclosure Statement, as amended, supplemented, or otherwise modified, the "Combined Disclosure Statement and Plan"), and on August 7, 2024, filed a motion seeking approval of the Disclosure Statement and solicitation procedures in connection therewith [Docket No. 316] (the

"Solicitation Procedures Motion"). The Solicitation Procedures Motion and approval of the Disclosure Statement was originally set for hearing on September 11, 2024 (the "Disclosure Statement Hearing").

11. In recent weeks, the Debtors, the Committee, and the DIP Lenders have engaged in negotiations regarding various global issues in the Chapter 11 Cases, including, among other things, the Sale and the Combined Disclosure Statement and Plan. The parties agreed that it would be in their best interests to expedite a mediation process to facilitate further settlement discussions in these Chapter 11 Cases and extend certain deadlines in connection with the sale and plan process.

12. On August 26, 2024, the Debtors filed the *Joint Motion for Order Authorizing and Directing Mediation* [Docket No. 346] (the "Mediation Motion"), seeking appointment of the Honorable Jeffrey W. Cavender as mediator in the Chapter 11 Cases. That same day, the Court entered the order authorizing the Debtors, the Committee, and the DIP Lenders to participate in mediation on or around September 9-11, 2024. *See* Docket No. 347. Recovery Corp. has also confirmed that it plans to attend the mediation. In light of the mediation, the Debtors filed a notice continuing the Disclosure Statement Hearing and Sale Hearing to September 17, 2024 at 9:30 a.m. (prevailing Eastern Time). *See* Docket No. 350. In addition, the parties agreed that, to the extent the Debtors filed an amended Combined Disclosure Statement and Plan in advance of the September 17 hearing, the Debtors would seek conditional approval of the Disclosure Statement only, thereby preserving any disclosure-related objections to a subsequent date.

III. The Adversary Proceeding

13. On April 22, 2024, Recovery Corp. filed a lawsuit (the "Miami Action") in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida Civil

Division by Recovery Corp., captioned Healthcare Negligence Settlement Recovery Corp. v. 5405 Babcock Street Operations, LLC, et al., No. 2024-007342-CA01. The Miami Action was filed against forty-nine of the Debtors (collectively, the "Debtor Defendants") and nine non-Debtor entities (collectively, the "Non-Debtor Defendants").

14. On June 30, 2024, the Debtors filed their *Complaint* [Adv. Docket No. 1], initiating the pending adversary proceeding in these Chapter 11 Cases, captioned as Case No. 24-05127 (the "Adversary Proceeding"). That same day, the Debtors filed their *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* [Adv. Docket No. 2] (the "Stay Motion") and their brief in support thereof [Adv. Docket No. 3] (the "Brief"), seeking (a) an extension of the automatic stay to the claims and causes of action enumerated in the Miami Action to the Non-Debtor Defendants or (b) a preliminary injunction enjoining the same.

15. On July 19, 2024, Recovery Corp. filed its *Response in Opposition to Injunction Motion* [Adv. Docket No. 10], as well as its *Answer to Adversary Complaint* [Adv. Docket No. 11]. On July 23, 2024, the Debtors filed their *Reply in Support of Debtors' 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* [Adv. Docket No. 14].

16. On July 24, 2024, the Court heard argument from both the Debtors and Recovery Corp. on the issues pending in the Adversary Proceeding and ultimately issued an order extending the automatic stay to all claims and causes of action against the Non-Debtor Defendants in the Miami Action and enjoining Recovery Corp. from proceeding with the Miami Action in any manner until the earlier of (a) confirmation of a chapter 11 plan with respect to the Debtor Defendants, (b) dismissal of the Chapter 11 Cases of the Debtor Defendants, or (c) September 30,

2024, at which point a hearing will be held before the Court to determine whether further relief is necessary. *See* Adv. Docket No. 16.

IV. The Motion to Dismiss

17. On August 6, 2024, Recovery Corp. filed the Motion to Dismiss. In connection with the Motion to Dismiss, Recovery Corp. sent broad-ranging requests to the Debtors for production, requests for admission, and interrogatories to the Debtors (nearly all of which seek fact discovery related to claims and causes of action enumerated in the now-stayed Miami Action). Over the past few weeks, the Debtors have met and conferred with Recovery Corp. multiple times in good faith regarding its discovery requests and produced a substantial number of documents relevant to their requests. Despite the sheer breadth of the discovery requests, the Debtors are committed to providing Recovery Corp. with information responsive to its requests and intend to continue to produce documents on a rolling basis in the coming weeks, but reserve all rights and objections to these and any other discovery requests, including with respect to their scope and breadth. In addition, on September 4, 2024, Recovery Corp. filed a *Notice of Intent to Serve Subpoenas for Document Production on "Florida SNF Transferees"* [Docket No. 382], which contemplates serving subpoenas on 43 non-Debtor parties seeking broad-ranging discovery on 25 topics. Lastly, Recovery Corp. has indicated to the Debtors that it intends to take no fewer than five depositions in advance of the September 30 hearing in the Adversary Proceeding,[5] but has not, to date, served notices of depositions.

[5] Recovery Corp. apparently believes that the September 30 hearing date in the Adversary Proceeding—which was set by the Court to determine whether a further extension of the preliminary injunction was appropriate—is an evidentiary trial on the merits of the Miami Action. The Debtors disagree, and will be filing a short motion in the Adversary Proceeding seeking an extension of the preliminary injunction during the Plan process, highlighting that the relief requested at such hearing is narrowly tailored to the appropriateness of further extending the preliminary injunction and is not a trial on the merits of the Miami Action.

18. The Debtors are hopeful that providing the documents and discovery to Recovery Corp. will help it better understand the pre-petition transactions of which they complain, and assist Recovery Corp in remedying the substantial misinformation provided to date in Recovery Corp's pleadings. Although the Debtors will not, at this stage, respond to the numerous factual inaccuracies contained in the Motion to Dismiss, the Debtors will address any such issues at a hearing on the Motion to Dismiss, or Confirmation of the Plan, by presenting evidence that rebuts most, if not all, of the gross misstatements contained in the Motion to Dismiss.

PRELIMINARY OBJECTION

I. Legal Standard for Dismissal and/or Conversion

19. Bankruptcy Code section 1112(b) provides that, on request of a party in interest, "the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estates, for cause . . ." 11 U.S.C. § 1112(b)(1). It is well established law that "[t]he burden to establish grounds for conversion or dismissal under section 1112(b) is on the moving party." *In re Austin Ocala Ltd.*, 150 B.R. 279, 282 (Bankr. M.D. Fla. 1993). Given the "rehabilitative purpose" of chapter 11, "all doubts are to be resolved in favor of the debtor." *Id.* at 282; *see also In re Macon Prestressed Concrete Co.*, 61 B.R. 432, 436 (Bankr. M.D. Ga. 1986). "In determining whether 'cause' exists, the court must conduct a fact-specific inquiry of the debtor's *post-petition* circumstances, and may exercise its discretion." *In re Paterno*, 511 B.R. 62, 66 (Bankr. M.D.N.C. 2014) (citing *In re Motel Prop., Inc.,* 314 B.R. 889, 894 (Bankr. S.D. Ga. 2004)) (emphasis added).

20. Bankruptcy Code section 1112(b)(4) provides a non-exclusive list of 16 factors that qualify as "cause" for dismissal or conversion, the first of which—and the only "cause" factor that Recovery Corp. cites to in its Motion to Dismiss—is "substantial or continuing loss to or

diminution of the estate and the absence of a reasonable likelihood of rehabilitation." *Id.* at § 1112(b)(4)(A). Establishing cause for dismissal or conversion under the foregoing factor is a two-step inquiry, as courts must determine (a) whether there has been a substantial or continuing loss to the estate, and (b) if there is no reasonable likelihood of rehabilitation. *See Off. Comm. of Unsecured Creditors v. Moultrie (In re Moultrie)*, 586 B.R. 498, 502 (Bankr. N.D. Ga. 2018) (Drake, J.). Both of the foregoing elements must be satisfied. *Id.* at 503; *In re Motel Props., Inc.*, 314 B.R. 889, 895 (Bankr. S.D. Ga. 2004); *In re Ford Steel, LLC*, 629 B.R. 871, 879 (Bankr. S.D. Tex. 2021) ("To demonstrate cause pursuant to § 1112(b)(4)(A), the moving party must show there is *both* (1) a substantial or continuing loss to or diminution of the estate *and* (2) the absence of a reasonable likelihood of rehabilitation.") (emphasis added).

A. Substantial or Continuing Loss to or Diminution of the Estate

21. To determine if there is a continuing loss to or diminution of the estate, the Court must "look beyond financial statements and fully evaluate the present condition of the Debtor's estate." *In re YC Atlanta Hotel, LLC*, 630 B.R. 348, 363 (Bankr. N.D. Ga. 2021). If the loss is sufficiently large given the financial circumstances of the debtor as to "materially negatively impact the bankruptcy estate and interest of creditors, the loss is substantial." *Id.* Courts have held that a post-petition negative cash flow and an inability to satisfy current expenses constitute a loss to or diminution of the estate. *See In re YC Atlanta Hotel, LLC*, 630 B.R. at 363; *see also In re Ford Steel, LLC*, 629 B.R. at 879 ("Cause can be shown by demonstrating that the debtor suffered or continues to experience a negative cash flow or declining asset values following the order for relief.").

B. Absence of a Reasonable Likelihood of Rehabilitation

22. "[T]he standard under section 1112(b)(4)(A) is not the technical one of whether the debtor can confirm a plan, but, rather, whether the debtor's business prospects justify continuance of the reorganization effort." 7 Collier on Bankruptcy ¶ 1112.04 (16th ed. 2024). "'Rehabilitation,' as it is used in section 1112, is better read as encompassing a debtor's intention to use the bankruptcy process to prevent a complete and total loss of value." *See In re Honx, Inc.*, No. 22-90035, 2022 WL 17984313, at *3 (Bankr. S.D. Tex. Dec. 28, 2022). Early in a case, "when debtors are finding their bearings and exploring their exit options," courts have held that "simply making continued progress towards reorganization is sufficient to show a reasonable likelihood of rehabilitation." *In re Roman Cath. Diocese of Rockville Ctr., New York*, No. 20-12345 (MG), 2023 WL 4833307, at *1 (Bankr. S.D.N.Y. July 18, 2023); *see also In re YC Atlanta Hotel, LLC*, 630 B.R. at 363 (indicating that short-term postpetition operating losses are not sufficient grounds to convert or dismiss a bankruptcy case when financial viability is reasonably likely in the future).

23. Contrary to Recovery Corp.'s assertions, this factor is not met merely because a debtor has no ongoing business. *See In re Honx, Inc.*, 2022 WL 17984313, at *3 ("The Committee's contention that [the debtor] has no ongoing business and therefore cannot be said to have a goal of 'rehabilitation' misses the point. There is no ongoing business requirement in the Code. . . . By the Committee's logic, any chapter 11 process that purports to create a plan of liquidation rather than reorganization, for example, would be dismissed for cause . . . [and], sometimes, a plan of liquidation is better for all parties than attempting to salvage the business as an ongoing matter or allowing the provisions of chapter 7 or a race to the courthouse to dictate the liquidation process."); *Toibb v. Radloff*, 501 U.S. 157, 166 (1991) ("Although the structure and legislative history of chapter 11 indicate that this chapter was intended primarily for the use of

business debtors, the Code contains no 'ongoing business' requirement for chapter 11 reorganization, and we find no basis for imposing one.").

II. The Motion to Dismiss Should be Denied Because Recovery Corp. has not Demonstrated Cause for Dismissal under 11 U.S.C. § 1112(b).

A. The Motion to Dismiss Should be Denied as Premature.

24. As an initial matter, Recovery Corp.'s sole basis for demonstrating the absence of a reasonable likelihood of rehabilitation are purported deficiencies with the Combined Disclosure Statement and Plan and the alleged inability of the Debtors to successfully confirm a Plan relating to the previously-divested facilities. Courts in the Eleventh Circuit have denied motions to dismiss or convert as premature in certain circumstances, including, among others, where no plan has been proposed or where negotiations with creditors remain ongoing, because it was impossible to determine whether there was a reasonable likelihood of rehabilitation. *See, e.g.*, *In re All Am. of Ashburn, Inc.*, 40 B.R. 104, 108 (Bankr. N.D. Ga. 1984) ("Because no chapter 11 plan has yet been proposed, a discussion of confirmability is premature."); *Matter of Karl A. Neise, Inc.*, 16 B.R. 602, 604 (Bankr. S.D. Fla. 1981) ("The uncontroverted testimony of the Debtors' principal further establishes that he has negotiated an arrangement satisfactory to the Debtors' trade creditors and that he intends to file a timely plan and disclosure statement. Against this background, it is simply premature for this Court to determine at this time that there is no reasonable likelihood of rehabilitation."); *In re Platinum Props. of Cent. Fla., Inc.*, No. 6:07-bk-04441-ABB, 2007 WL 4874796, at *1 (Bankr. M.D. Fla. Nov. 16, 2007); *In re Lykes Bros. S.S. Co., Inc.*, 196 B.R. 586, 596 (Bankr. M.D. Fla. 1996) ("There is hardly any doubt that a conversion at this time would not only be premature based on these factors, but would not be in the interests of the general estate."); *In re Lizeric Realty Corp.*, 188 B.R. 499, 504 (Bankr. S.D.N.Y. 1995), as amended (Nov. 28, 1995) (refusing to dismiss case for bad faith where the secured creditor conceded that at early stage of

case it is premature to assess the debtor's ability to confirm a plan and had cited no per se limitation on debtor's ability to confirm a plan).

25. Importantly, courts have also denied such motions as premature and declined to dismiss chapter 11 cases for "cause" when the purported basis for dismissal or conversion primarily involves disclosure statement or confirmation issues. *See, e.g.*, *In re Basil St. Partners, LLC*, 477 B.R. 856, 862 (Bankr. M.D. Fla. 2012) ("APL's argument that there is no reasonable likelihood of rehabilitation misses the mark insofar as APL appears to be arguing that the Debtor could not comply with the confirmation requirements of section 1129. The Court declines APL's invitation to turn the conversion hearing into a confirmation hearing, and concludes that APL has not met its burden of establishing 'cause' under section 1112(b)(4)(A)."); *In re Adell*, 325 B.R. 883, 886 (Bankr. M.D. Fla. 2005) ("[W]hile it is appropriate to dismiss a chapter 11 case for 'cause,' it would be inappropriate and premature to dismiss this chapter 11 case based on the inadequacies of the Disclosure Statement as a matter of law . . . confirmation issues should be considered at the confirmation hearing and not the hearing on the Disclosure Statement."); *In re Sleep Diagnostics Ctrs. of Coastal Georgia, Inc.*, No. 03-42680, 2004 WL 2165864, at *6 (Bankr. S.D. Ga. Aug. 25, 2004) ("Although Dr. Buda did not address this argument in his brief, counsel did assert at the hearing that Dr. Buda would not vote for the plan proposed by the Debtors and that no plan can be confirmed. This argument is premature until it is certain that Debtors have no ability to amend their plan in such a way that the plan could be confirmed . . . this Court does not at this time find cause to dismiss or convert the Debtors' cases.").

26. Claimed deficiencies (even if true, which they are not) with the Combined Disclosure Statement and Plan, without more, at this stage of the Chapter 11 Cases renders the Motion to Dismiss premature. Given the upcoming mediation and contemplated revisions to the

Combined Disclosure Statement and Plan, it is impossible to determine conclusively that there is an absence of a reasonable likelihood of rehabilitation with respect to the Florida DivestCo Debtors. Accordingly, the Debtors submit that the Motion to Dismiss should be denied as premature until, at a minimum, the conclusion of the Confirmation Hearing.

B. Recovery Corp. has not Demonstrated Cause to Dismiss or Convert the Florida DivestCo Debtors.

27. As set forth above, the Motion to Dismiss is silent with respect to the requisite section 1112(b) standard, other than a single reference to "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." Motion to Dismiss, at 20. To successfully demonstrate cause under this factor, Recovery Corp. needs to satisfy both elements discussed above but instead fails to provide evidence to support either prong of this analysis.

i. Recovery Corp. Fails to Provide Evidence of Substantial or Continuing Loss to or Diminution of the Florida DivestCo Debtors' Estates.

28. With respect to the first factor, Recovery Corp. provides no legal basis or factual support regarding any substantial or continuing loss or diminution to the estates of the Florida DivestCo Debtors. Recovery Corp. incorrectly asserts that "[t]he only assets of the Florida DivestCo Debtors are the claims arising from their divestiture. . ." Motion to Dismiss, at 20. However, the schedules of assets and liabilities and statements of financial affairs filed for each of the Florida DivestCo Debtors in these Chapter 11 Cases paint a different picture, as certain of Florida DivestCo Debtors having some remaining assets, including accounts receivable not yet converted to cash, among other assets. What is even clearer, however, is that whatever claims Recovery Corp. has with respect to the Florida DivestCo Debtors is—in almost all scenarios—behind substantial secured claims held by the Prepetition ABL Lender (MidCap), Omega (under

the Omega Second Lien Term Note and a lien in favor of the Omega Landlords) and the DIP Lenders. As this Court has stated previously on the record, Recovery Corp. is not the only creditor in these Chapter 11 Cases[6] and there are others (including those with secured claims ahead in priority to Recovery Corp.) who stake claim to any available recoveries from the Florida DivestCo Debtors.

29. Even if Recovery Corp.'s assertions were true, it does not establish that the Florida DivestCo Debtors are experiencing substantial or continuing losses sufficient to justify their dismissal or conversion. Although Recovery Corp. believes that it can simply excise the Florida DivestCo Debtors from the Chapter 11 Cases (either through dismissal or conversion), and pursue claims in the Miami Action to return funds directly to its holders, the facts paint a much more nuanced and complicated scenario for at least three reasons.

30. *First,* although the Florida DivestCo Debtors no longer operate their facilities, the entities themselves are still part of the Debtors' consolidated financials, tax returns, and cash management system. There is a unity of interests among all the Debtors, both with respect to ownership and corporate governance. It's clear that disentangling and segregating the individual assets and liabilities of the Florida DivestCo Debtors, given the integrated, centralized cash management and accounting systems, is not an easy task. In fact, the Debtors *do* believe that the factors for substantive consolidation under applicable law can be met, although the Debtors' evidence to sustain that burden is best saved for Confirmation, to the extent necessary.

31. *Second,* as noted above, the Florida DivestCo Debtors are either obligors and/or guarantors on both of the Debtors' prepetition secured financings and, importantly, all of the

[6] THE COURT: "Your clients aren't the only creditors in this case, you know." Hr'g Tr. 36:9-10, *LaVie Care Centers, LLC*, Case No. 24-55507 (PMB) (Bankr. N.D. Ga. July 24, 2024).

Florida DivestCo Debtors are obligors under the DIP facility, meaning that their dismissal or conversion may immediately trigger an event of default and potentially terminate the Debtors' DIP facility. And even if it didn't, any claims or causes of action held by the Florida DivestCo Debtors, if any, would go first to pay secured claims senior to the claims of Recovery Corp.

32. *Third*, the Debtors previously presented evidence showing that the previously-divested facilities in Florida experienced $133 million in EBITDA losses in 2022 and 2023, whereas the Debtors' existing "KeepCo" portfolio generates positive cash flow. Given that the Debtors had a centralized cash management system, the cash flow of the positive EBITDA buildings was being used for many years to fund substantial losses at the Florida DivestCo facilities. Although it is undoubtedly a highly-fact intensive exercise, it is certainly possible that some or all of the Debtors' current "KeepCo" portfolio may have significant fraudulent transfer and other claims against some of the Florida DivestCo Debtors. Given these issues, Recovery Corp. may actually be *better* served through a Plan that substantively consolidates the Debtors, as it would avoid separating out (and potentially litigating) these claims and causes of action that would almost certainly be costly, time-consuming and may ultimately significantly reduce (or eliminate altogether) any remaining recovery for Recovery Corp. and other creditors.

33. Accordingly, while Recovery Corp. may view their dismissal or conversion as a simple exercise, unwinding the Florida DivestCo Debtors from the Debtors' broader corporate enterprise will be an expensive and time-consuming endeavor that neither the Debtors nor their creditors can afford.

ii. Recovery Corp. Fails to Demonstrate an Absence of a Reasonable Likelihood of Rehabilitation for the Florida DivestCo Debtors.

34. With respect to the second factor, Recovery Corp. insinuates that there is no likelihood of rehabilitation for the Florida DivestCo Debtors simply because they are no longer

operating facilities. Like the committee in *Honx*, Recovery Corp. "misses the point" and ignores the fact that there is no ongoing business requirement in the Bankruptcy Code. *See In re Honx, Inc.*, No. 22-90035, 2022 WL 17984313, at *3; *Toibb*, 501 U.S. at 166. The Florida DivestCo Debtors, like other non-operational debtors, are using the bankruptcy process to preserve value and maximize recoveries for the benefit of all creditors, including Recovery Corp. The fact that the Florida DivestCo Debtors are no longer operating does not mandate dismissal.

35. In support of this factor, Recovery Corp. also points to alleged deficiencies with the Combined Disclosure Statement and Plan, several of which are deficiencies that do not exist but have been manufactured by Recovery Corp. as a result of its blatant misunderstanding of its terms. These include, among others, the inclusion of non-consensual third-party releases (there are no such releases in the Combined Disclosure Statement and Plan) and the Debtors' inability to justify substantive consolidation of the Debtors' estates (no such request has been made to date, and if required under a further revised Plan, would be supported by evidence presented at the Confirmation Hearing). Again, setting aside the inaccuracy of each of these statements, none of these claimed deficiencies (even if true) are sufficient to justify dismissal or conversion. The Debtors will be prepared to make the requisite evidentiary showing with respect to satisfaction of each of the factors set forth in Bankruptcy Code section 1129 at the appropriate time, including satisfying the applicable standards for approval of any proposed releases and substantive consolidation, should such relief be sought in connection with confirmation.

36. Moreover, as stated above, the Debtors are preparing for mediation and are committed to working in good faith with the mediation parties—which include Recovery Corp.—to reach global consensus in these Chapter 11 Cases. Following mediation, with or without a consensual deal, the Debtors intend to file a revised Combined Disclosure Statement and Plan

which will presumably address many of the purported disclosure and confirmation deficiencies enumerated in the Motion to Dismiss. In short, although there is work yet to be done with respect to the Combined Disclosure Statement and Plan, the Debtors' efforts to date—alongside a mediation process scheduled to occur next week—demonstrates that there is a clear path to a successful rehabilitation in these Chapter 11 Cases for **all** Debtors.

III. The Motion to Dismiss Should Be Denied Because Neither Dismissal nor Conversion of the Florida DivestCo Debtors are in the Creditors' Best Interests.

37. Though conveniently ignored by Recovery Corp., Bankruptcy Code section 1112(b) permits dismissal or conversion for cause only if it "is in the best interest of the creditors and the estate." 11 U.S.C. § 1112(b). Even if Recovery Corp. were able to establish legitimate "cause" to dismiss or convert the Florida DivestCo Debtors (which it cannot), such dismissal or conversion is unequivocally not in the best interests of creditors or the estates, as it would lead to significant risks for creditors and prejudice to the Debtors' estates. As stated above, there are substantial complications, and likely adverse consequences, to the Florida DivestCo Debtors in simply dismissing their cases from these Chapter 11 Cases to pursue litigation that this Court has determined to include quintessential estate causes of action. In addition, dismissal or conversion of the Florida DivestCo Debtors would deprive their creditors—including Recovery Corp.—of the benefits inherent in the chapter 11 process, such as a well-established, orderly, value-maximizing process to confirm a plan and/or sell assets, over which creditors, through the participation of the Committee, will have substantial input and oversight. Though Recovery Corp. appears confident in its ability to recover outside of chapter 11, it is not the only creditor in these Chapter 11 Cases and should not be allowed to be the sole party dictating their path forward, particularly when doing so may prejudice other creditors and the Debtors' estates.

38. For the reasons stated herein, the Motion to Dismiss should be denied.

RESERVATION OF RIGHTS

39. The Debtors reserve all rights with respect to the Motion to Dismiss and the arguments raised therein, including their rights to supplement, amend, or otherwise modify this Objection, as well as their rights with respect to any and all arguments that Recovery Corp. may raise in any reply or at any hearing on the Motion to Dismiss. The Debtors also reserve all rights with respect to any and all arguments with respect to the adequacy of the information included in the Disclosure Statement, the satisfaction of the confirmation factors enumerated in Bankruptcy Code section 1129, and other related issues, including, but not limited to, the appropriateness of releases and substantive consolidation.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, for the reasons set forth in the Objection, the Debtors respectfully request that the Court deny the Motion to Dismiss and grant any other and further relief as the Court deems just and proper.

Dated: Atlanta, Georgia
September 5, 2024

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

Daniel M. Simon (Georgia Bar No. 690075)
1180 Peachtree St. NE, Suite 3350
Atlanta, Georgia 30309
Telephone: (404) 260-8535
Facsimile: (404) 393-5260
Email: dsimon@mwe.com

- and -

Emily C. Keil (admitted *pro hac vice*)
Jake Jumbeck (admitted *pro hac vice*)
Catherine Lee (admitted *pro hac vice*)
444 West Lake Street, Suite 4000
Chicago, Illinois 60606
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
Email: ekeil@mwe.com
jjumbeck@mwe.com
clee@mwe.com

Counsel for the Debtors and Debtors-in-Possession