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

In Re:

LAVIE CARE CENTERS, LLC, et al.,                   Docket No. 24-55507-pmb  
Debtors.

Atlanta, GA  
September 17, 2024  
9:47 AM

. . . . .

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

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1 Specially Set Hybrid Hearing/Status Conference

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1 APPEARANCES:

2 For the Debtors, LaVie Care  
Centers, LLC, et al.:

DANIEL M. SIMON, ESQ.  
(TELEPHONICALLY)  
MCDERMOTT WILL & EMERY LLP  
1180 Peachtree Street, NE  
Suite 3350  
Atlanta, GA 30309

5

6

NATHAN M. BULL, ESQ.  
(TELEPHONICALLY)  
MCDERMOTT WILL & EMERY LLP  
333 Southeast 2nd Avenue  
Suite 4500  
Miami, FL 33131

7

8

9

10

11

EMILY C. KEIL, ESQ.  
(TELEPHONICALLY)  
MCDERMOTT WILL & EMERY LLP  
444 West Lake Street  
Suite 4000  
Chicago, IL 60606

12

13 For Official Committee of  
Unsecured Creditors:

FRANCIS J. LAWALL, ESQ.  
(TELEPHONICALLY)  
TROUTMAN PEPPER HAMILTON  
SANDERS LLP  
300 Two Logan Square  
18th and Arch Streets  
Philadelphia, PA 19103

14

15

16

17

18

19

DEBORAH KOVSKY-APAP, ESQ.  
(TELEPHONICALLY)  
TROUTMAN PEPPER HAMILTON  
SANDERS LLP  
875 Third Avenue  
New York, NY 10022

20 For Cigna Health and Life  
Insurance Company:

JEFFREY C. WISLER, ESQ.  
(TELEPHONICALLY)  
CONNOLLY GALLAGHER, LLP  
1201 North Market Street  
20th Floor  
Wilmington, DE 19801

21

22

23

24

25



1 For Omega parties: MATTHEW W. LEVIN, ESQ.  
(TELEPHONICALLY)  
2 SCROGGINS & WILLIAMSON,  
P.C.  
3 4401 Northside Parkway  
Suite 450  
4 Atlanta, GA 30327

5 LEIGHTON AIKIN, ESQ.  
(TELEPHONICALLY)  
6 FERGUSON BRASWELL FRASER  
KUBASTA PC  
7 2500 Dallas Parkway  
Suite 600  
8 Plano, TX 75093

9 For TIX 33433 LLC: JAMES P. MUENKER, ESQ.  
(TELEPHONICALLY)  
10 DLA PIPER LLP (US)  
1900 North Pearl Street  
11 Suite 2200  
Dallas, TX 75201

12 For Welltower NNN Group LLC: MICHAEL G. FARAG, ESQ.  
(TELEPHONICALLY)  
13 GIBSON DUNN & CRUTCHER LLP  
14 333 South Grand Avenue  
Los Angeles, CA 90071

15 For Healthcare Negligence  
16 Settlement Recovery Corp. LLC: JOHN ANTHONY, ESQ.  
(TELEPHONICALLY)  
17 NICHOLAS LAFALCE, ESQ.  
(TELEPHONICALLY)  
18 ANTHONY & PARTNERS, LLC  
100 S Ashley Drive  
Suite 1600  
19 Tampa, FL 33602

20 For Jacksonville Nursing Home,  
Ltd.: KATHLEEN G. FURR, ESQ.  
(TELEPHONICALLY)  
21 BAKER DONELSON  
3414 Peachtree Road, NE  
22 Suite 1500, Monarch Plaza  
Atlanta, GA 30326  
23  
24  
25



1 For Office of the U.S. Trustee: JONATHAN S. ADAMS, ESQ.  
2 U.S. DEPARTMENT OF JUSTICE  
3 75 Ted Turner Drive,  
4 Southwest  
5 Atlanta, GA 30303  
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1 THE CLERK: The court will come to order. Good  
2 morning, Your Honor. Today is September 17th, 2024. The time  
3 is now 9:47 a.m. We are here for the specially set hybrid  
4 hearing for case number 24-55507, LaVie Care Centers, LLC, et  
5 al.

6 We are here for the debtors' motion for entry of  
7 order, 1, approving disclosure statement, 2, scheduling  
8 confirmation hearing, 3, establishing procedures for  
9 solicitation and tabulation of votes of the plan, 4, approving  
10 certain forms and notices, and 5, granting related relief at  
11 docket number 316.

12 On September 13th, 2024, debtors' counsel filed a  
13 notice of continued disclosure statement hearing at docket  
14 number 428, rescheduling the hearing on the motion for today  
15 to a hybrid hearing on September 23rd, 2024 at 1:30 p.m. The  
16 notice also indicates the hearing today is to be treated as  
17 status conference.

18 THE COURT: All right. Good morning, everyone.  
19 Mr. Simon.

20 MR. SIMON: Good morning, Your Honor.

21 THE COURT: It's been a little while.

22 MR. SIMON: Again, Dan Simon, McDermott Will & Emery,  
23 on behalf of the debtors. We'll make our comments brief  
24 today. At the outset, we do want to thank Your Honor and the  
25 Court for your patience and flexibility with the parties over



1 the past several weeks as we reached the critical stage of  
2 these Chapter 11 cases. Today was supposed to be reserved for  
3 a sale hearing date and a hearing on the disclosure statement,  
4 and we'll use it to update the Court and the parties on some  
5 key developments.

6 First, with respect to the sale process, as this  
7 Court knows, shortly after the petition date, the debtors  
8 embarked on a comprehensive sale and marketing effort led by  
9 Stout Capital. Stout went out to market, pursuant to court-  
10 approved bid procedures, to market the debtors assets, which  
11 consisted primarily of leasehold interest of the Omega  
12 portfolio, the Welltower portfolio, and the Elderberry  
13 portfolio.

14 On June 24th, the Stout team began to reach out to  
15 approximately 147 potential purchasers, including strategic  
16 and financial buyers, as well as current operators that serve  
17 Omega and Welltower in other portfolios. After reviewing a  
18 two-page teaser, thirty-four parties executed NDAs and  
19 received a comprehensive, confidential information memorandum,  
20 which contained detailed financial and other information about  
21 the facilities.

22 The Stout team also set forth a nonbinding date by  
23 which indications of interest would be submitted. Two parties  
24 submitted written indications of interest, each of which  
25 expressed interest in acquiring only a subset of the debtors'



1 facilities. The three facilities leased from Elderberry were  
2 included in both indications of interest, and one of the  
3 indications of interest also included two additional  
4 facilities under the Omega master lease. Both parties  
5 conducted site visits during the week of August 19th, and  
6 Stout continued to facilitate diligence and had numerous calls  
7 with both parties and reminding those bidders of the upcoming  
8 September 5th bid deadline.

9           Ultimately, Your Honor, that day came and passed.  
10 Unfortunately, both of those bidders pulled out, and neither  
11 submitted a qualified bid by the bid deadline. The only item  
12 the debtors received was a letter from the DIP lenders,  
13 indicating that they were qualified bidders under the bidding  
14 procedures, and they wished to participate and bid at an  
15 auction, including their ability to submit a credit bid. But  
16 since that was the only item received by the bid deadline from  
17 potential bidders, the debtors canceled the auction.

18           That auction was scheduled to take place last Monday,  
19 September 9th, which leads me to the mediation, which also  
20 began on that date at McDermott's offices in Atlanta. The  
21 parties attending the mediation were the debtors, the  
22 committee, TIX 33433 as DIP lender and proposed plan sponsor,  
23 and Omega. And I will also note that Mr. John Anthony from  
24 Recovery Corp. was in attendance at the mediation as well.

25           And first and foremost, I'll note that discussions in



1 connection with the mediation process are all confidential,  
2 and they are subject to the mediation privileges and the order  
3 of this court. And obviously, we take that very, very  
4 seriously. What I can say, though, with a hundred percent  
5 certainty and without breaching any confidence, is that Judge  
6 Cavender, appointed as mediator by Your Honor, has been  
7 incredibly helpful to the process. And I want to thank this  
8 Court for offering and allowing the services of a member of  
9 the complex case panel to assist in mediation. And also just  
10 note, for the record, all of the parties' overwhelming  
11 gratitude for Judge Cavender's services.

12 All that being said, the mediation lasted the  
13 afternoon and into the evening on Monday the 9th. Additional  
14 discussions occurred amongst the parties on Tuesday the 10th.  
15 And the mediation lasted the entire day on Wednesday the 11th.  
16 Sitting here today, the parties are not in agreement, but  
17 discussions remain ongoing, including with Judge Cavender.  
18 They are what I would refer to as sensitive negotiations  
19 amongst the parties, and the debtors still remain hopeful that  
20 a deal can be reached in the coming days.

21 And so Your Honor, that brings me for the final item  
22 for update. As noted earlier, the disclosure statement  
23 hearing was continued from today until next Monday, September  
24 23rd. The debtors do intend to file an amended combined plan  
25 and disclosure statement imminently because we want to be sure



1 parties have a chance to review the amendments well in advance  
2 of that date.

3 The agreement amongst the mediation parties is that  
4 the hearing on Monday the 23rd will be for conditional  
5 approval of the disclosure statement. So while we believe  
6 that the amended plan will have fulsome disclosures, to the  
7 extent that any party believes that there is not adequate  
8 disclosure, under Section 1125 of the Bankruptcy Code, those  
9 objections will be preserved to confirmation.

10 It remains the debtors' hopes that if a resolution is  
11 reached in the coming days during the mediation process, that  
12 settlement can be baked directly into the plan in advance of  
13 the 23rd hearing. At the same time, the debtors don't have  
14 the luxury of time, and the debtors believe they have a path  
15 forward, without the consent of the committee, should that be  
16 necessary.

17 We can address those issues and lay out a path to  
18 confirmation of a plan before Your Honor next Monday. They  
19 are not for today. And as I said, there should be an amended  
20 plan and disclosure statement on file imminently that  
21 describes that path forward. And unfortunately, Your Honor, I  
22 think we may provide you with some reading material for your  
23 trip to the NCBJ conference.

24 With that, those are my updates today. And again, we  
25 appreciate Your Honor's flexibility as the process unfolds.



1 It is what I would refer to as a dynamic, delicate, and all-  
2 consuming process by all parties. And with that, we look  
3 forward to seeing you next Monday.

4 THE COURT: All right. Maybe I'll move on to the  
5 committee next.

6 Mr. Lawall.

7 MR. LAWALL: Yes. And thank you, Your Honor. And  
8 good morning. And thank you for agreeing to schedule a status  
9 conference this morning.

10 With respect to the sale process, we'll not have any  
11 real comments at this point. But depending upon where  
12 confirmation goes, we may have some concerns with the sale  
13 process. But that's not for today. And so we acknowledge  
14 that the auction was canceled and that there was no 363  
15 auction conducted at this time.

16 With respect to the mediation, we agree, Judge  
17 Cavender has been extremely helpful, and we appreciate his  
18 efforts. These negotiations are difficult. The committee  
19 remains ready, willing, and able to try and reach a deal  
20 recognizing the complex nature of the creditor constituency.  
21 But we are trying to pull everyone together in a way that  
22 makes sense, and we will continue to do so.

23 With respect to the disclosure statement hearing next  
24 Monday, quite frankly, we're not sure how we can have a real  
25 disclosure statement hearing next Monday, but I guess we can



1 revisit it at that point, given what we expect to be very  
2 significant changes to the plan and disclosure statement  
3 document. When we see it, we'll review it and we'll respond  
4 accordingly. But given the compressed nature with respect to  
5 the timing and what have you, just not sure that a disclosure  
6 statement will be an appropriate form to go out next Monday or  
7 that the parties will have had sufficient time to really  
8 express their views as to whether, even in a conditional  
9 basis, it is sufficiently fulsome to go out for voting and to  
10 expend the estates resources. But again, we'll keep our  
11 powder dry until we have seen that document, and then we can  
12 respond.

13 That's all I have, Your Honor.

14 THE COURT: Okay. Anybody9/20/2024 else like to be  
15 heard with regard to the status of this matter?

16 MR. ADAMS: Your Honor, if no one else online does,  
17 just very briefly, Jonathan Adams, on behalf of the United  
18 States Trustee. Of course, we were not a party to the  
19 mediation process, but we are glad that the parties are still  
20 negotiating and are hopeful that they are able to reach --

21 THE COURT: You want to turn that whole --

22 MR. ADAMS: Sure.

23 THE COURT: There we go.

24 MR. ADAMS: Don't want them to be able to see me.

25 THE COURT: So everyone can see you.



1 MR. ADAMS: That would be terrible, wouldn't it?

2 We are glad that the parties are still negotiating  
3 and are hopeful that they are able to reach an amicable  
4 settlement of their issues. Just a few notes that I would  
5 make that would want to bring the Court's attention.

6 We have also discussed with debtors' counsel an  
7 extension of our deadline to object to any disclosure  
8 statement and plan to this Friday. It's my understanding, Mr.  
9 Simon, as debtors' counsel, has agreed to that. So we will  
10 also keep our powder dry as to what that amended disclosure  
11 statement and plan might say.

12 It's my understanding there will be significant  
13 amendments. And again, I just don't think it's appropriate  
14 for me to comment on what our position may be until we know  
15 what those are. As Your Honor may imagine, we will likely  
16 have something to say about the release provisions and also  
17 are concerned a bit about disclosure, but we will take that up  
18 when we have the actual document in front of us.

19 One other point I would make, Your Honor, this is  
20 more of a case update, but I did want to let the Court know.  
21 The first of the patient care ombudsman reports came in last  
22 week, I believe, from the State of Pennsylvania. They have  
23 some minor inquiries with debtors' counsel, and they've  
24 responded to us regarding those issues.

25 I've also had correspondence with the patient care



1 ombudsman in Florida, Virginia, and North Carolina. Frankly,  
2 Your Honor, those reports are overdue at this point. It's my  
3 understanding that the Virginia report will be filed by the  
4 end of business today. So hopefully in the next day or two,  
5 we'll have that. Also, the State of Florida report will be  
6 coming in the next day or two. And according to the State  
7 Health Care Ombudsman, North Carolina, we will have that by  
8 Friday.

9 We did want to let the Court know that we knew those  
10 reports were overdue and that we were following up with the  
11 state ombudsmans. Thank you, Your Honor.

12 THE COURT: Very good. All right. Anyone  
13 else?

14 Mr. Anthony, nothing for us today?

15 MR. ANTHONY: Your Honor, appreciate your invitation.  
16 At this point, that the dialog with the debtor and the  
17 creditors committee continues. And rather making comments  
18 that would responses from the debtor, it seems, to me, that  
19 the next couple of days, we'll continue to exercise our best  
20 efforts to vet the issues privately. And maybe I can reserve  
21 some time for one day if we're not successful.

22 THE COURT: Okay. I expect there'll be plenty of  
23 time on Monday, but --

24 MR. ANTHONY: Thank you, Judge.

25 THE COURT: -- we shall see.



1 Mr. Simon, I know, among other things, Mr. Anthony  
2 has a motion to compel that he has filed and supplemented, I  
3 believe. I was just wondering whether the debtors intended to  
4 respond.

5 MR. SIMON: We do, Your Honor. I think, the  
6 objection deadline, by our calculation, is September 24th.

7 Just by way of background, Mr. Bull is on the  
8 responses that Mr. Anthony complained about were provided  
9 within an hour of the motion to compel. We had indicated to  
10 Mr. Anthony that they would come in by the end of the week.  
11 And nevertheless, Mr. Anthony filed a motion to compel. He  
12 has the documents -- or the responses. And he had it within  
13 minutes, really, of the filing of the motion to compel because  
14 they were ready to go. We could address that when Your Honor  
15 takes up the motion.

16 THE COURT: Okay. I was just trying to figure out  
17 whether I should expect a response.

18 MR. SIMON: I'm not aware -- yeah, I apologize. I'm  
19 not aware of whether that has been set for hearing. We think  
20 it was procedurally improper. And we've raised some of those  
21 issues with Mr. Anthony. But to the extent it is up for  
22 hearing, we will respond accordingly, and we will address it  
23 at that time.

24 MR. ANTHONY: So and Your Honor, that's the sort of  
25 thing that prompts a response. The McDermott Will & Emery



1 firm was retained by the debtors last February, and he has a  
2 significant leg up as far as the production that we've asked  
3 for. It has been a slow process, and we have an obligation to  
4 do our best to cordially and professionally work out these  
5 issues. But we need deposition dates. There was a lot of the  
6 responses that we did get were problematic.

7 And as soon works for the pleasure of the Court and  
8 also when the debtors are ready, we are ready to discuss  
9 getting our discovery because we are at an informational  
10 disadvantage with the debtors trying to move into these cases,  
11 these 282 cases as rapidly as they can, while at the same time  
12 moving slowly with discovery. We have a whipsaw effect that  
13 is obviously being felt.

14 THE COURT: Okay. Yeah.

15 MR. SIMON: Your Honor, Your Honor, I'll just note  
16 that we'll reserve rights. We obviously disagree. We've been  
17 in active discussions with Mr. Anthony. There is outstanding  
18 discovery served on both sides, and we'll continue to work  
19 through the issues. And to the extent it is necessary to  
20 raise them, at a motion on either the motion to compel or  
21 otherwise, we'll address it at that time. But significant  
22 productions have been made to Mr. Anthony --

23 THE COURT: Okay.

24 MR. SIMON: -- and will (indiscernible).

25 MR. ANTHONY: They were made last week, and we'll be





1 responding early.

2 THE COURT: Okay. And my question was just whether  
3 the debtors were going to file a written response. And I  
4 think the answer to that is yes. And so we'll see where that  
5 goes.

6 All right. Anything else we can do to benefit this  
7 case at this time? Otherwise, I don't want to take up any of  
8 your time, since hopefully you can spend some of it this week  
9 continuing to discuss the resolution of these matters. All  
10 right.

11 MR. SIMON: Nothing from the debtors. Thank you,  
12 Your Honor. We appreciate the time.

13 MR. LAWALL: Nor the committee. Thank you, Your  
14 Honor.

15 THE COURT: All right. Well, you all have a good  
16 day, and we'll see you next Monday.

17 (Whereupon these proceedings were concluded at 10:04 AM)

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

I, River Wolfe, the court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

  
RIVER WOLFE

September 20, 2024  
DATE

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