

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

3 In Re: .
4 LAVIE CARE CENTERS, LLC, . Docket No. 24-55507-pmb
5 OFFICIAL COMMITTEE OF UNSECURED .
6 CREDITORS, .
7 Debtor. . Atlanta, GA
8 . . September 30, 2024
9 . . 2:20 PM
10
11 LAVIE CARE CENTERS, LLC ET AL, . Adv. Proc. 24-05127
12 Plaintiff, .
13 -against- .
14 HEALTHCARE NEGLIGENCE SETTLEMENT .
15 RECOVERY CORP., .
16 Defendant. .
17

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

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22 7227 N. 16th Street
23 Suite #207
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(800) 257-0885

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1 Specially Set Hybrid Hearing

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25 Transcribed by: Michael Drake



1 APPEARANCES:

2 For the Debtors, LaVie Care DANIEL M. SIMON, ESQ.
Centers, LLC, et al.: MCDERMOTT WILL & EMERY LLP
3 1180 Peachtree Street, NE
Suite 3350
4 Atlanta, GA 30309

5 EMILY C. KEIL, ESQ.
MCDERMOTT WILL & EMERY LLP
6 444 West Lake Street
Suite 4000
7 Chicago, IL 60606

8 For Official Committee of FRANCIS J. LAWALL, ESQ.
Unsecured Creditors: TROUTMAN PEPPER HAMILTON
9 SANDERS LLP
300 Two Logan Square
10 18th and Arch Streets
Philadelphia, PA 19103

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

15 For TIX 33433 LLC: JAMES MUENKER, ESQ.
DLA PIPER LLP (US)
16 1900 North Pearl Street
Suite 2200
17 Dallas, TX 75201

18 Office of the United States JONATHAN S. ADAMS, ESQ.
Trustee: U.S. DEPARTMENT OF JUSTICE
19 75 Ted Turner Drive, SW
Atlanta, GA 30303

20 For Healthcare Negligence JOHN A. ANTHONY, ESQ.
21 Settlement Recovery Corp: ANTHONY & PARTNERS LLC
1000 South Ashley Drive
22 Suite 1600
Tampa, Florida 33602

23

24

25



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

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

9 ROBERT J. LEMONS, ESQ.
(TELEPHONICALLY)
10 GOODWIN PROCTER LLP
620 Eighth Avenue
11 New York, NY 10018

12 For the United States of VIVIEON K. JONES, ESQ.
America: THE UNITED STATES
13 ATTORNEY'S OFFICE
75 Ted Turner Street, SW
14 Suite 600
Atlanta, GA 30303

15 LOUISA A. SOULARD, ESQ.
(TELEPHONICALLY)
16 U.S. DEPARTMENT OF JUSTICE
PO BOX 875
17 Washington, DC 20044

18 For Midcap Funding IV Trust: BRYAN E. BATES, ESQ.
(TELEPHONICALLY)
19 PARKE, HUDSON, RAINER &
DOBBS LLP
20 303 Peachtree Street NE
Suite 3600
21 Atlanta, GA 30308

22 DYLAN J. MARKER, ESQ.
(TELEPHONICALLY)
23 PROSKAUER ROSE LLP
Eleven Times square
24 New York, NY 10036
25



1 For Midcap Funding IV Trust: KATHRYN L. STEVENS, ESQ.
(TELEPHONICALLY)
2 VEDDER PRICE, P.C.
222 North LaSalle Street
3 Chicago, IL 60601

4 For Healthcare Services Group, Inc.: ROBERT LAPOWSKY, ESQ.
(TELEPHONICALLY)
5 STEVENS & LEE
620 Freedom Business
6 Center
Suite 200
7 King of Prussia, PA 19406

8 For Cigna Health and Life Insurance Company: JEFFREY C. WISLER, ESQ.
(TELEPHONICALLY)
9 CONNOLLY GALLAGHER, LLP
1201 North Market Street
10 20th Floor
Wilmington, DE 19801

11 For Jacksonville Nursing Home Ltd.: KATHLEEN G. FURR, ESQ.
(TELEPHONICALLY)
12 BAKER DONELSON
3414 Peachtree Road, NE
13 Suite 1500
Atlanta, GA 30326

14

15 For Welltower NNN Group, LLC: MICHAEL G. FARAG, ESQ.
(TELEPHONICALLY)
16 GIBSON, DUNN & CRUTCHER
LLP
17 333 South Grand Avenue
Los Angeles, CA 90071

18

19 For the United Steelworkers and AFSCME: NICHOLAS STANOJEVICH, ESQ.
(TELEPHONICALLY)
20 QUINN, CONNOR, WEAVER,
DAVIES & ROUCO LLP
21 2-20 20th Street North
Suite 930
22 Birmingham, AL 35203

23

24

25



1 American Federation of State, MATTHEW S. BLUMIN, ESQ.
County, and Municipal Employees: AFSCME, AFL-CIO
2 (TELEPHONICALLY)
3 1011 17th Street NW
Suite 900
4 Washington, DC 20036
5
6
7
8
9
10
11
12
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14
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Colloquy

1 THE CLERK: All rise. The Court will come to order.

2 THE COURT: Please be seated.

3 THE CLERK: Good afternoon, Your Honor. Today is
4 September 30th, 2024. The time is now 2:20 p.m. We are here
5 for the specially set hybrid hearing for Case Number 24-55507,
6 LaVie Care Centers, LLC et al. and the specially set hybrid
7 hearing in adversary proceeding 24-5127, LaVie Care Centers
8 LLC, et al. versus Health Care Negligence Settlement Recovery
9 Corp. There are four matters on the calendar.

10 Pursuant to the agenda, the following matters are
11 uncontested: in the main case, the 365(d)(4) motion at docket
12 Number 436. Pursuant to the agenda, the following matters are
13 contested: in the adversary proceeding, the state extension
14 motion at docket number 2, and in the main case, the
15 solicitation procedures motion at docket number 316, which is
16 related to the debtors' combined disclosure statement and
17 joint Chapter 11 plan of reorganization at docket number 273.
18 This matter was first amended by docket Number 438. And the
19 second amendment was filed at docket Number 461.

20 Debtors' counsel, is this your understanding?

21 MR. SIMON: It is.

22 THE COURT: All right.

23 MR. SIMON: Good afternoon, Your Honor. Again, Dan,
24 Simon, McDermott, Will & Emery on behalf of the debtors,
25 joined today a counsel table by Ms. Emily Keil and also joined



Colloquy

1 in the courtroom by the debtors' chief restructuring officer,
2 Mr. Benjamin Jones.

3 As Ms. Marshon-Lessa (ph.) noted, the agenda is
4 simple. And with Your Honor's permission, I'd like to begin
5 with the main event which is the disclosure statement and
6 plan.

7 THE COURT: That'd be a fine place to start.

8 MR. SIMON: Okay. Your Honor, today is a -- what I
9 would refer to as a banner day in these Chapter 11 cases. The
10 month of September has been a critical inflection point.
11 Every one of the professionals in this room has worked
12 tirelessly to be able to be in front of you, to solicit votes
13 on a Chapter 11 plan that has the support of all of the key
14 constituents, including the official committee of unsecured
15 creditors. It was not an easy road to get here today.

16 And so before we go into detail about what the plan
17 says and how it works, I'd like to just spend a few minutes
18 walking the Court through how we got here. The first plan was
19 filed on July 23rd. When we filed it, we referred to it as a
20 placeholder plan. It set forth the building blocks to where
21 we are today. In broad strokes, that plan provided for either
22 a sale transaction or restructuring transaction and for funds
23 to flow through in the order of priority as that result,
24 played out from the debtors' process run by Stout.

25 Once we learned more about that process, it would



Colloquy

1 flow down through the waterfall. And at that time we had
2 contemplated a hearing date of September 11th, which was
3 actually a joint hearing, sale hearing as well as a disclosure
4 statement hearing.

5 As discovery matters heated up in the months of July
6 and August, it appeared that the parties would benefit from a
7 mediation process. Discovery was flowing. And there were
8 many issues to address. So before the parties decided to go
9 embark on costly depositions and other issues, we reached out
10 to the Court to seek some assistance. And the Court offered
11 Judge Cavender. And let me tell you, we're glad you did.

12 That mediation began on September 9th, and I'm going
13 to come back to that in a moment, because September 9th was
14 also the date that we were supposed to hold an auction. After
15 that date, I did announce the results of the sale process on
16 the record, but they bear repeating here. The debtors' assets
17 represent leasehold interests in the three leasehold
18 portfolios, Omega, Welltower and Elderberry, plus the Harts
19 Harbor facility. It did not yield anything in the sale
20 process.

21 There was an expansive reach-out to nearly 150
22 parties. Two bidders submitted indications of interest, but
23 ultimately neither made it to submit a qualified bid. And
24 although it was admittedly an underwhelming result, it was a
25 very important piece of information heading into that



Colloquy

1 mediation on September 9th.

2 The mediation commenced on that date. The parties to
3 that mediation were the debtors, the creditors' committee,
4 including certain of its members, including Mr. Anthony who's
5 here today, Omega, and TIX 33433, which is the DIP lender and
6 also now the proposed plan sponsor. That mediation occurred
7 on September 9th. And it was continued to September 11th,
8 which was an all-day affair.

9 The parties left that mediation with no agreement.
10 The parties continued discussions and negotiations over that
11 period. And Judge Cavender remained very involved in that
12 process. At various times, it appeared that the parties would
13 reach an impasse. And in the midst of this, given that, the
14 debtors, not confident that they were able to have a
15 consensual plan, negotiated with the DIP lenders for what we
16 refer to as a nonconsensual plan. And we reached agreement on
17 that. And we filed that plan on September 17th at docket 438.
18 That nonconsensual plan, which did not have the support of the
19 committee, provided for total consideration of seven million
20 dollars cash plus the proceeds of divested accounts receivable
21 for the benefit of unsecured creditors. But unless the
22 committee signed a plan support agreement by a certain date,
23 that amount would then be reduced by the amount of
24 professional fees incurred over the budget. That plan also
25 contemplated a full substantive consolidation of the debtors.



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1 In light of those discussions amongst the parties
2 that were ongoing during this time and the nonconsensual plan
3 on file the next day, Judge Cavender issued a mediator's
4 proposal with a deadline of acceptance of September 20th. The
5 parties and Judge Cavender had numerous conferences over that
6 period of time. And ultimately, the parties reached agreement
7 on September 20th on that mediator's proposal.

8 At that point, we reached out again to chambers one
9 last time to continue the disclosure statement again that was
10 scheduled for last Monday, the 23rd while the parties
11 documented that settlement. That was not easy either. The
12 past week has been intense. And at various points we again
13 turn to judge Cavender over the last few days for assistance
14 on the issues relating to the documentation of the mediator's
15 proposal, including the allocations to the various classes of
16 general unsecured creditors in light of the substantive
17 consolidation, which is now different. But it happens within
18 two different silos, the OpCo silo and the DivestCo silo.

19 And although it wasn't easy, we did it. We filed a
20 consensual plan incorporating the mediator's proposal last
21 Thursday evening. And we've in fact continued to work with
22 the parties since that time, including over the weekend, late
23 last night. And as of a couple hours ago, we do have a
24 modified version. We can walk through that in a little bit.
25 Doesn't really change the substance, but it helps clarify some



Colloquy

1 of the points around the treatment. And we can talk through
2 that.

3 So let me say very clearly for the record, none of
4 this could have been accomplished without Judge Cavender. He
5 was determined to get the parties to the right place. And
6 even when the parties appeared that there would be no
7 agreement, he saw it as an opportunity to dig in. The
8 submission of the mediator's proposal was a gamechanger in
9 this case. And it ultimately paved the way to the hearing
10 today. And so I'll speak for all the parties. I know that
11 we're all in agreement. We are very grateful and appreciative
12 for his efforts. And also, we're grateful and appreciative
13 for this Court and Your Honor for ensuring his availability
14 and also working with us on multiple continuances while the
15 process played out.

16 With that, unless you have any questions on how we
17 got here, I'll turn my attention to the terms of the modified
18 plan.

19 THE COURT: Just one question since you mentioned it.
20 I noticed the split substantive consolidation. Can you tell
21 me what that's about, why that was --

22 MR. SIMON: Yeah, the --

23 THE COURT: -- why that was important to the parties,
24 why it's important to the plan?

25 MR. SIMON: Yes. As we laid out in our nonconsensual



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1 plan, the debtors believed for a lot of different reasons that
2 substantive consolidation was appropriate. The committee
3 disagreed. And the committee believed that it wasn't
4 appropriate, that we didn't meet the factors. And the
5 committee believed that there were very significant
6 differences between the OpCo debtors and the DivestCo debtors,
7 and that by splitting it amongst the silos, we could achieve
8 better results and kind of work that way. And so there's
9 basically substantive consolidation within the OpCo so that
10 there's kind of one group of creditors there and substantive
11 consolidation within the DivestCo and one group of creditors
12 there. There's also on top of that, and I'll go through this
13 in a little bit, a lot of consideration flowing in to allow
14 for proceeds to actually flow to unsecured creditors. Does
15 that answer your question?

16 THE COURT: Sure, for the moment.

17 MR. SIMON: We'll get into it in a little more
18 detail. And I'm sure Mr. Lawall would have some thoughts to
19 offer on that point as well.

20 And so the modified plan, I'd say it's somewhat
21 complicated because of that, right, because we've now split
22 between the silos and the associated treatment, an allocation
23 to unsecured creditors occurs in two different groups of
24 creditors. And in fact -- and we'll talk about class 6C as a
25 third group as well.



Colloquy

1 I'm going to try to summarize the plan in seven
2 steps. And obviously feel free to stop me if you have any
3 questions. Number 1, this is a reorganization plan, not a
4 liquidation plan. It contemplates the assumption of the
5 leases underlying all forty-three facilities which operate on
6 a go-forward basis, assumption of the Omega lease, the
7 Welltower lease, the Elderberry lease, and the one Harts
8 Harbor facility. The assumption of the Omega lease is
9 critical because there is a waiver of the cure clause
10 associated with that.

11 Number 2, the consideration being provided to the
12 debtors estates is in excess of seventy million dollars. It
13 includes the waiver of the DIP, which, with fees and interest,
14 is approximately twenty-three million dollars. It includes
15 the assumption by the reorganized debtors on a modified basis
16 o f the Omega secured second lien term loan. That with
17 interest is approximately twenty-seven million dollars. It
18 includes the payment of or assumption of all administrative
19 and priority claims necessary to confirm the plan. And it is
20 contemplated that Midcap is also entering into a new ABL line
21 with the reorganized debtors which addresses that senior
22 secured position.

23 Third, on top of that funding, there is significant
24 consideration flowing to general unsecured creditors and
25 funding of a GUC trust. So what I referred to in number 2 is



Colloquy

1 all of the funds necessary to kind of get to the unsecured
2 funding. And this is what's being provided to the unsecured
3 creditors. This includes 10.75 million dollars in cash on the
4 effective date, all of the remaining accounts receivable as of
5 the effective date on account of divested facilities, and any
6 proceeds on claims that are backed by D&O insurance. That D&O
7 coverage is up to twenty-five million dollars. The divested
8 accounts receivable also includes a backstop of two million
9 dollars by the reorganized debtors, which is guaranteed by the
10 plan sponsor.

11 Number 4, and you referenced it, the revised plan
12 does not contemplate full substantive consolidation but rather
13 substantive consolidation through silos. In other words, all
14 of the operating debtors on the one hand are substantively
15 consolidated, and all of the divested debtors and other
16 nonoperating entities are consolidated with each other.

17 5, and this is where it gets a little tricky around
18 that, plan treatment to general unsecured claims are
19 apportioned based on the silo. And this was done obviously in
20 very close coordination with the creditors' committee. Class
21 6A is now OpCo debtors. Class 6B is DivestCo debtors. And
22 I'll come back to class 6C in a moment.

23 The plan sponsor consideration is being divvied up
24 between class 6A and class 6B in a manner that the committee
25 believes largely aligns with the assets held by each silo. So



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1 the OpCo side, class 6A, gets 9.25 million in cash but no
2 contingent assets. The DivestCo side on the other side, class
3 6B, gets a million and a half in cash plus the divested AR
4 which is at a minimum another two million in cash plus
5 whatever else is collected on top of that plus all of the
6 proceeds on account of the no claims.

7 Class 6C is simply any claims that were joint and
8 several against the OpCo debtors because substantive
9 consolidation had the effect of actually rendering those
10 claims with less value. And so this was an effort to provide
11 them with a little bump in consideration. It's a one percent
12 recovery on top of those -- on top of what those claimants
13 could receive in class 6A or 6B. And it was necessary to kind
14 of get the creditors' committee on board. And it's estimated
15 that those amounts will be approximately 264,000 dollars.
16 There is a cap in the plan that was filed of 250,000. That is
17 one of the changes that we've agreed to is to remove that cap,
18 but it's only slightly less than that. And ultimately those
19 funds come out of the opco amount anyway.

20 On all of these points, part of the significant
21 legwork in documenting this and implementing it was to make
22 sure that there was an effort, and it was led by the Ankura
23 team, to take all of the claims and sort them into 6A and 6B
24 based upon the nature of the claim and whether it originated
25 at a divested facility or a KeepCo facility. And so now that



Colloquy

1 effort is largely done, and we're working with KCC to make
2 sure that preprinted ballots and all of this can be done
3 through solicitation over the next week. That was number 5.

4 Number 6, in exchange for this consideration, there
5 are broad debtor releases in the plan, all causes of action
6 other than the D&O claims vest in the reorganized debtors.
7 And the debtors, Midcap, Omega and their respective affiliated
8 parties would receive a release from the debtors. This
9 follows the result of two independent investigations, the
10 debtors, which was led by Chapman with assistance from
11 McDermott and one independent by the committee. Both of these
12 investigations were summarized in the disclosure statement.
13 And both of these investigations support the releases being
14 granted by the debtors.

15 And lastly, 7, in addition to the debtor releases,
16 the plan does feature consensual opt-out third-party releases.
17 These releases are similar to many other plans around the
18 Country that require affirmative opt-out on the ballots,
19 including those approved previously in this Court. Except
20 there's a key distinction between many of those cases and what
21 we have here, which is a one-page plain English clear note on
22 every ballot and at the at the outset of the plan which spells
23 out very clearly that if you do nothing, your rights will be
24 compromised and that you as a creditor alone have that choice.
25 These opt-outs were acceptable in most courts prior to Purdue.



Colloquy

1 And our view is Purdue does not change the landscape. In
2 fact, the Supreme Court said as much. We quote that language
3 in our disclosure statement. But they are consensual. And
4 parties do have the ability to opt out. We know that this has
5 been a hot-button issue for the U.S. Trustee's office since
6 Purdue. And we look forward to arguing that issue not today
7 but at the confirmation hearing.

8 Those are the seven pillars to this plan. I think
9 there can be little or no doubt that the plan and disclosure
10 statement contains adequate information to afford creditors
11 the ability to vote, to accept or reject the plan. It's also
12 our understanding that the committee will be including in the
13 solicitation package a letter to creditors urging them to
14 vote, to accept.

15 Nevertheless, despite what I said, we are seeking
16 only conditional approval today. All disclosure-type
17 requirements under Section 1125 are preserved for the
18 confirmation hearing. We have that explicit language in the
19 form of order.

20 In addition to the revised plan and disclosure
21 statement, we also filed a revised form of solicitation
22 procedures order, which includes the ballots. That's filed at
23 docket for sixty-three. It's got a black line, again, to the
24 previously filed version. This includes the proposed schedule
25 leading up to confirmation, including that solicitation will



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1 begin no later than five business days after entry of an
2 order. The plan supplement deadline is on October 28th. The
3 voting deadline and the objection deadline for confirmation
4 would be on November 4th. That's a day before the
5 presidential election, so parties can cast their votes two
6 days in a row.

7 And we propose what we call a combined hearing on the
8 adequacy of the disclosure statement and confirmation of the
9 plan. We were seeking November 13th. We got a reach-out from
10 chambers that that date is unavailable. And I think the
11 parties are in agreement that we would simply go to the next
12 date, November 14th.

13 With that, Your Honor, I just want to underscore the
14 efforts of the parties to get to this place. And I think the
15 important milestone that today marks in these Chapter 11
16 cases. And once again, I will thank Judge Cavender for the
17 mark that he has made on the case.

18 So with that, I'm happy to answer any questions, or
19 we can -- we do have a revised form of the plan. We're happy
20 to pass that out. But we defer to how Your Honor --

21 THE COURT: That's been revised since the last one
22 you filed?

23 MR. SIMON: It has.

24 THE COURT: Okay.

25 MR. SIMON: It has.



Colloquy

1 THE COURT: So let me ask a couple of questions. I
2 thank you for the summary of the plan. And congratulations to
3 all the parties and Judge Cavender have gotten you at least
4 this far. You mentioned the -- as part of the -- part of the
5 plan, the Omega leases will be assumed. And their, I guess,
6 cure will be satisfied somehow not to the detriment of the
7 unsecured creditors. Do you know how much that is?

8 MR. SIMON: The cure I want to say is approximately
9 thirty-three million, but let me just check. I'm getting nods
10 of yes.

11 THE COURT: Okay. And looking at the debtors'
12 operating reports, it looks like -- mean, we had a twenty-
13 million-dollar DIP. It looks like we're running near the end
14 of it, but certainly by the time we get into October. Am I
15 reading that correctly?

16 MR. SIMON: So I'm going to turn in a second to Mr.
17 Jones, but we are in the process of amending some of the DIP
18 milestones, including the maturity date. And we'll probably
19 finalize that tomorrow after we set this schedule. I believe
20 there is sufficient liquidity under the DIP, but let me --
21 give me a moment.

22 THE COURT: Sure.

23 MR. SIMON: The way that the DIP budget appears,
24 there are payments made at the end of the case. And so while
25 it appears that those payments would be made at the end of the



Colloquy

1 DIP forecast, as the case progresses, they would be pushed off
2 to the end. So we do believe that there is sufficient funds
3 to get into mid-November on the DIP.

4 THE COURT: Okay. I want to make sure the debtors
5 don't run out of money while we're --

6 MR. SIMON: We share that as well.

7 THE COURT: -- doing all of this. All right. Go
8 ahead.

9 MR. SIMON: That that is all I have as far as kind of
10 preliminary comments.

11 We do have a form of order. Again, we're happy to
12 walk through that. But obviously the parties have been hard
13 at work. And we're happy to answer any questions, or if you
14 want to hear from other parties at this point.

15 THE COURT: Yeah. I think I'll hear from whoever
16 else wishes to be heard from.

17 MR. LAWALL: Good afternoon, Your Honor. Fred Lawall
18 again, Troutman firm, on behalf of the committee.

19 Very tough negotiations. And Your Honor pointed out
20 the subcon silos that have been put forth in this current
21 plan. And just by further explanation, the reason that was
22 done, again, if you recall, Your Honor, the forty-three or so
23 operating entities actually have operating facilities. And it
24 was believed, notwithstanding what happened at the auction,
25 that those facilities still had value. And therefore, there



Colloquy

1 was an attempt by the committee, which, as Your Honor knows,
2 we have had some problems with subcon to begin with, to
3 somehow at least fairly balance the interest of the various
4 parties, those who are on the OpCo side, versus those who are
5 on the DivestCo side and still return value to both groups.
6 It's by no means a perfect situation, and this is by no means
7 a perfect plan, but it is a plan that has been negotiated in
8 the context of some very difficult situations, including
9 massive debt that's -- as Your Honor is aware, on the face
10 amount, it looks like it could be 500 million between all of
11 the various entities.

12 At the same time, the committee looked at this from
13 the perspective that in order ultimately to get value to the
14 unsecured creditors, we were going to have to first deal with
15 the debt stack that existed, including the secured debt and
16 some of the obligations that Mr. Simon had indicated exist.
17 And to the extent that you were able to get through that, and
18 there might be ways that you could, it would be -- it would
19 involve significant litigation plus costs. And as Your Honor
20 has pointed out, there is always the concern with respect to
21 the risk as to the health, safety, welfare of residents, which
22 we've always been mindful of.

23 Well, we thought there might be workarounds in order
24 to preserve that value and at the same time possibly preserve
25 litigation claims. We also looked at the perspective that in



Colloquy

1 order to get there, the two -- in order to get to the point
2 where we would be able to pursue those causes of action, the
3 plan would have to be defeated, the cases would have to
4 convert, then a trustee would have to be convinced in order to
5 pursue those causes of action.

6 And under those circumstances, we balanced out the
7 really difficult decision of saying should we settle at these
8 levels or should we just pursue a litigation path? And
9 ultimately, Your Honor, as has been indicated, we have agreed
10 to support this plan as it's currently structured. While,
11 again, it's not perfect, it does at this point have the
12 support of the committee.

13 And again, the reasoning for that allocation between
14 the two silos largely has to do with respect to where one
15 group had operating assets which had value whereas the other
16 group had basically nothing but potential causes of action
17 that might have been able to be pursued. So I hope that
18 satisfies some of your concern, Your Honor, as to why and how
19 we got to that particular outcome. I don't know, Your Honor,
20 if you have any other questions from the committee
21 perspective.

22 THE COURT: Sure. How deeply were you able to look
23 into the potential litigation claims on behalf of DivestCos?

24 MR. LAWALL: Well, Your Honor, as you know, there
25 were significant causes of action that we were concerned



Colloquy

1 about. And the two sets of causes of action that we looked at
2 were fraudulent conveyance and successor liability in
3 particular. And with respect to both, as you know, Your
4 Honor, there is a predisposition against successor liability
5 and the integrity of a corporation and with respect to the
6 sale.

7 The arguments in favor of successor liability would
8 be that you had basically the same entities operating these --
9 not the same entities, but these same operations existing in a
10 new legal entity after the transfer had occurred. On the
11 other hand, Your Honor, there were issues with respect to
12 common ownership. And while without going into too much
13 detail, Your Honor, we thought that there were issues there
14 with some common ownership, but it might not have been
15 perfect. But it hasn't been pursued, Your Honor, in part to
16 the point of getting to the very end of that litigation in
17 part because we went through this mediation and everything
18 became a balancing act.

19 Can I tell, Your Honor, at the end of the day, that
20 we're absolutely sure that if you pursue this litigation until
21 the very end, that there might not be a better recovery?
22 There's always that possibility. And that's how litigation
23 is. Your Honor knows. You're a seasoned lawyer before you
24 became a judge. You don't know. And so it's a balancing --
25 and so you have to balance everything out, which is where the



Colloquy

1 committee came out.

2 I will tell you Your Honor, this was one of the most
3 difficult decisions I've made in my professional career. But
4 at the end of the day, the analysis was done step by step by
5 step. This is where the committee came out under these
6 particular circumstances. It wasn't an easy decision, Your
7 Honor.

8 THE COURT: Okay.

9 MR. LAWALL: Do you have any further questions?

10 THE COURT: No. That's it for now.

11 MR. LAWALL: Thank you.

12 THE COURT: Mr. Anthony, before I get to you, Mr.
13 Adams?

14 MR. ADAMS: Thank you, Your Honor. Good afternoon.
15 Jonathan Adams on behalf of the United States Trustee.

16 And as I'm sure the Court knows, the United States
17 Trustee timely filed our objection to the amended disclosure
18 statement back on September the 20th as docket number 445.
19 Since that time, as Mr. Simon has pointed out, debtor has
20 filed a second amended combined disclosure statement and plan
21 at docket 462. That resolves several of the issues that we
22 raised in our disclosure statement objection.

23 We're really down to two issues that we want to talk
24 to the Court about today. The first, maybe the easier issue
25 to address, is we believe there's just not enough information



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1 regarding the GUC trust agreement for the creditors to make an
2 informed decision on how to vote on the plan. And frankly,
3 Your Honor, we don't have the GUC trust agreement yet. There
4 is a promise to provide by the plan's supplement deadline. I
5 believe I'll let Mr. Simon correct me if I'm wrong, but I
6 believe that date is October the 28th. That'd be just one
7 week before the creditors have to vote. And, Your Honor, we
8 just don't think that's enough time. But this is a critical
9 document. It's a document that's going to explain how the
10 administration of these funds is going to take place, who's
11 going to be making those decisions, things of that nature. We
12 believe that for the creditor body to make an informed
13 decision regarding the plan, it needs to understand that
14 administration process.

15 We do also understand and appreciate the fact that
16 the parties have been negotiating very hard over the past
17 several weeks. I understand there's been a lot of progress
18 made. But time is a limiting factor, and we understand that.

19 But, Your Honor, we do think mere seven days before
20 the objection or voting deadline is just not enough time. And
21 so we ask the Court if possible to hold off the balloting
22 until we have the trust agreement. If the Court is not
23 willing to do that, we do ask that the deadline for this trust
24 agreement to be provided be moved up. Let's put that on the
25 front burner, the first thing that's provided, and let's get



Colloquy

1 that earlier so that everybody has access to it. If there's
2 any issues, we can work that out as quickly as possible prior
3 to the objection deadline, which I believe is November 4th.

4 Your Honor, that's really the only disclosure issue
5 that we have. The other issue, as I think Mr. Simon has
6 advertised already, is with respect to the third-party
7 releases. And I know that Your Honor is very familiar with
8 the issue. We know that, of course, nonconsensual third-party
9 releases were the subject in Purdue Pharma that the Supreme
10 Court decided earlier this year.

11 And so, Your Honor, now we're down to the definition
12 of what is consent. And I think that the courts all across
13 the country will be having to decide that issue over upcoming
14 months and years. But frankly, Your Honor, we take the
15 position that silence is not consent. I think that's the
16 simplest way to put our argument here. If Your Honor looks, I
17 think article 10, Section D, part 2 is where the third-party
18 releases are in the plan. I'm looking at the red line.
19 That's docket 462. That'd be page 112 and 113. And you have
20 some definitions that assist in determining who is being
21 released and -- who's getting the release and who's doing the
22 releasing. And the definition section, part 1.239 and part
23 1.240 of article 2, section A, that's the definition section.

24 Your Honor, from our point of view, the debtors
25 contend they're seeking consensual third-party releases. You



Colloquy

1 know, that's just simply not the case. In order -- in our
2 opinion. And in order to opt out here, a creditor has to take
3 action. They have to take the ballot. They have to check the
4 box to opt out. And then they have to return that ballot. By
5 simply sitting still, they will lose rights. And, Your Honor,
6 under state contract law, we think that just doesn't meet the
7 definition of consent. And as a result, we believe that that
8 the releases that are included in the plan are nonconsensual
9 in substance, even if they're using the name consensual when
10 addressing the Court.

11 Your Honor, we briefed the issue pretty thoroughly.
12 I don't want to bore the Court with a recitation of the brief,
13 although I'll be glad to do so if the Court would like to hear
14 that the Court has any questions on our position, I'd also
15 like to address that.

16 THE COURT: So you you've used the right term, which
17 is that what we're looking for is consent. Your brief is more
18 about an agreement. And aren't those different things?

19 MR. ADAMS: Your Honor, I don't think it is. I think
20 whether -- and I think if you look at our brief, the way we
21 argued it, we think that any release would have to be governed
22 by state contract law. And it is essentially an agreement
23 between the parties. A consent by the debtor to release is
24 essentially a contract.

25 And so that same concept would travel here to a



Colloquy

1 third-party release. And so, Your Honor, we disagree. We
2 think this is governed by contract law. And we believe that
3 silent does not -- silence does not equal assent here.

4 THE COURT: Okay. Well --

5 MR. ADAMS: And we do think -- and just to address
6 one other thing that Mr. Simon has pointed out to the Court,
7 we do believe this is an issue that the Court should at least
8 consider now. We're balloting right now. The Court -- I
9 don't know if this specifically before the Court at this
10 moment, but the Court -- the debtor is asking the Court to
11 approve the solicitation package today. That's going to --
12 that's approved today. And we believe instead of an opt-in,
13 there's a very simple solution on how the Court could fix the
14 consent issue once and for all. Have it be opt-in. Have the
15 debtor -- have the creditor be forced to take affirmative
16 action to be part of whatever class. As a result of the opt-
17 in, there would be consent? I don't think we could argue
18 otherwise. We would have an affirmative action by the
19 creditor there that they want to be a part of a release -- of
20 the release agreement.

21 There's a simple way to fix this. I imagine the
22 debtors would not be amenable to such a fix. But we believe
23 it's something that we should address now. We don't want to
24 be in a position where five or six weeks down the road, the
25 Court looks at us and says, well, you know, we've already



Colloquy

1 approved these balloting procedures. The United States
2 Trustee was aware of them and let them go by. No. We want to
3 raise the issue now. We want you to know now. We believe
4 there's a simple fix. And we believe that there's a
5 fundamental issue with allowing a third-party release here
6 that is called consensual but in fact is not.

7 THE COURT: Okay.

8 MR. ADAMS: Thank you, Your Honor.

9 THE COURT: Got you.

10 MR. LAPOWSKY: Your Honor, can you hear me?

11 THE COURT: I can.

12 MR. LAPOWSKY: This is Robert Lapowsky. This is one
13 of the difficulties of not being in the courtroom.

14 I wanted to just put a very brief statement on the
15 record in support of the debtors' request for approval of the
16 disclosure statement. But then we moved on to those who are
17 objecting. And I just thought maybe it would make sense to
18 let me just put that on the record now and then move back to
19 the objectors, if that's okay with you.

20 THE COURT: All right. If you can remind me who you
21 represent. Oh, there we go.

22 MR. LAPOWSKY: Yeah. I'm happy to do that. I
23 represent Healthcare Services Group, Your Honor, which is the
24 which is owed about seventy million dollars. It's the largest
25 trade creditor in the case by some factor of four or five,



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1 excluding Powerback which is a creditor which is waiving its
2 distribution. So Healthcare services group has a large stake
3 in the outcome of this case.

4 The Healthcare Services Group claims arise under two
5 contracts, one to provide housekeeping and laundry services to
6 the debtor facilities and the other provide dining services.
7 So Healthcare Services Group effectively provides all of the
8 employees, all of the food, all of those things that fall
9 within those categories to keep these -- both the currently
10 operating debtors running as well as most, if not all, of the
11 DivestCos who were operating debtors.

12 We have claims on both the OpCo and the DivestCo
13 side. The claims against the DivestCos are actually slightly
14 larger than the claims on the -- that fall into the OpCo silo.
15 And Healthcare Service Group is also the chair of the
16 creditors' committee.

17 There have been, as you can imagine, Your Honor, some
18 Healthcare Services Group-specific issues that have been
19 raised in the context of the plan. The debtors and the plan
20 opponents have engaged with us and my perspective in good
21 faith. And we've resolved those issues. So we support
22 approval of the disclosure statement as the most effective way
23 to bring this unfortunate situation to an end. We're not
24 delighted with the returns that we're going to get on our
25 claims. But under the circumstances, we think that it is a



Colloquy

1 fair result.

2 We do intend to support the plan subject to one
3 caveat, and that is that we anticipate that our contracts are
4 going to be rejected in the context of the plans and that we
5 will be entering into new contracts with the debtors to
6 provide housekeeping services and dining services post-
7 effective date. Those contracts are still in the process of
8 being negotiated. Assuming that those negotiations result in
9 contracts that both parties are agreeable to before the plan
10 voting deadline, we would plan to vote yes on the plan and to
11 support confirmation. Thank you, Your Honor. I'm happy to
12 answer any questions you have.

13 THE COURT: No. Thank you, though for jumping in.
14 And I will get back to all the other folks that are online. I
15 figured I'd go through the folks in the courtroom first and
16 then get -- but don't worry. I'll give everybody a chance to
17 weigh in as appropriate.

18 MR. LAPOWSKY: Thank you, Your Honor.

19 MR. MUENKER: Good afternoon, Your Honor. For the
20 record, James Muenker of DLA Piper on behalf of TIX 33433 LLC,
21 which is one of the co-DIP lenders in the case, Your Honor, as
22 well as the now plan sponsor.

23 I don't have much to add, Your Honor, other than to
24 second some of the comments that were made by debtors' counsel
25 and by committee's counsel regarding just how really difficult



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1 it was to get to this result and second the appreciation that
2 everyone has expressed to the mediator, Judge Cavender, for
3 his efforts in helping us get there.

4 To borrow an oft expressed phrase regarding
5 settlements, the definition of a good settlement is one in
6 which no one is happy. And I think that is certainly the case
7 here. It took a lot of, I think, compromise and effort on
8 behalf of all the stakeholders, including my client, in order
9 to get to a result that was acceptable to all of the major
10 stakeholders in the case.

11 And ultimately, while it was difficult, we are happy
12 to be at a point now where I think we've got a plan that we
13 are proud to be supportive of that will, given our
14 expectation, have the overwhelming support of a majority of
15 the creditors and certainly the largest stakeholders in this
16 case.

17 I will just close by saying there's a lot of work
18 that needs to be done. Your Honor correctly noted there are
19 still -- it's important that given the limited resources
20 available to the debtor between now and confirmation and
21 hopefully an effective date of the plan -- if this plan is
22 confirmed, there's still a lot of work to be done. Things do
23 need to progress in a way in which targets are satisfied,
24 conditions to the effectiveness are satisfied in an efficient
25 way because there is not an unlimited amount of money. And



Colloquy

1 the plan does not provide for payment of claims if they exceed
2 certain amounts.

3 So with that being said, Your Honor, we're happy to
4 stand up and support approval of the disclosure statement
5 today and look forward to seeing you in a few weeks. Thank
6 you.

7 THE COURT: Very good.

8 MS. JONES: Good afternoon, Your Honor. Vivieon
9 Jones on behalf of the United States for the Internal Revenue
10 Service.

11 And the Internal Revenue Service is clearly a
12 nonconsensual creditor in these cases. And as to some of the
13 IRS claims, specifically the priority tax claims under the
14 most recently filed version of the plan -- I understand that
15 there's another version coming. Under the most recently filed
16 version, the priority claims are clearly not to vote.

17 The IRS has some outstanding requests that it has
18 presented to the debtors and looks forward to continuing to
19 work with the debtors in order to resolve whatever outstanding
20 matters there are between now and the next hearing date and is
21 certainly prepared to raise any additional disclosure
22 statement issues along with the confirmation objections to the
23 extent one needs to be filed at a later date.

24 THE COURT: Okay. Are there significant tax claims
25 here?



Colloquy

1 MS. JONES: Your Honor, we -- there are a good number
2 of tax claims, yes. We do anticipate a sizable tax claim.

3 I will say that the -- we look forward to seeing the
4 next version of the plan and to see if there's any additional
5 information and that is contained in that.

6 THE COURT: Okay. Thank you.

7 MR. AIKEN: Your Honor, Leighton Aiken on behalf of
8 the Omega parties.

9 I'll echo what the others have said. We strongly
10 support the plan. We think it's a good result. Not
11 overwhelmed with the consideration being paid, but understand
12 that it's the most fair way to get this plan across the line.

13 I would like to also echo the thanks to Judge
14 Cavender. He had incredible patience. He navigated some --
15 numerous brick walls. And without his guidance, this could
16 not have gotten done. So we stand in support of the plan.

17 THE COURT: Very good.

18 MR. ANTHONY: Your Honor, if not the first, then I'd
19 like to be the last to congratulate and thank Judge Cavender
20 for his hard work and perseverance in this effort.

21 I also want to say, however, that the mediator's
22 proposal is not what was filed on Thursday night. If it were
23 that, then we would have just heard a violation of mediation
24 privilege.

25 Everybody did a lot of work during this process. And



Colloquy

1 we certainly recognize the genius and the efforts of every
2 lawyer and the good faith of every lawyer involved here.

3 However what we're here for as I understand it is
4 early or preliminary approval of a disclosure statement.
5 We've seen it happen in many cases. You have a small case
6 where everybody kind of understands what's going on. 2002(b)
7 is there for a reason, not to be honor in the breach. It's
8 twenty-eight days. It so happened that that when this plan
9 combined document was filed, a large number of the creditors
10 in this case were having four feet of water blow through their
11 homes.

12 In in your average case, shortening or preliminary
13 approval might make sense. And maybe the rules will be
14 changed at some point to reflect that. But this monstrosity
15 of a set of jointly administered, not substantively
16 consolidated reorganizations is the last conceivable candidate
17 for what the debtors are asking for today.

18 Now counsel says that it's a banner day. I don't
19 know what's on that banner, but I will say this: Creditors'
20 committee counsel very thoughtfully looked at this whole thing
21 and said -- you just heard him say this was a very hard
22 decision, one of the hardest in his life. It was not that
23 hard for me. And I will tell you why, because I represent \$10
24 million of one hundred claimant victims, nursing home
25 negligence, gangrene, bed sores, starvation, wrongful death,



Colloquy

1 very unique classified one would think to read that disclosure
2 statement along with trade creditors and people who provide
3 the food, whether or not it makes it to the customer or to the
4 resident. Everything about this plan and disclosure statement
5 misses several threshold points.

6 The first thing, and I said it like Jeremiah in the
7 wilderness the last time I was here, keep your five percent.
8 We don't want your five percent. We want our claims. From
9 the very beginning, we knew that the debtors were going to
10 attempt to consolidate even though they were very carefully
11 created fairly recently from the ashes of consulate, the
12 initial bankruptcy case. You have a reincarnation, not like
13 my clients, not like the family members who died in these same
14 SNFs. But the reincarnation -- and they want the
15 consolidation so that there can be one great big, huge release
16 for 282 debtors even though most of them don't have anything
17 to release. So you heard it early on. There's forty-three
18 operating SNFs. My clients for the vast majority don't have
19 claims against them.

20 We formed Recovery Corp at a point in time when
21 seventeen law firms realized that all their settlement
22 agreements were effectively fraudulently obtained.

23 THE COURT: Okay. Let's just -- let's talk about
24 that for a minute, because the debtor has raised that as an
25 issue --



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1 MR. ANTHONY: Yeah.

2 THE COURT: -- which is to say that there seems to be
3 Florida law that would prohibit the transfer of these claims
4 absent court approval that I'm not aware has been provided.

5 MR. ANTHONY: So, Your Honor, that's the structured
6 settlement statute. And I can speak to that as much or as
7 little as you would want.

8 Florida Statute 626.99296 relates to a very narrow
9 set of instances that don't have anything to do with my
10 clients. So let's back up and explain a little bit about how
11 Recovery Corp got here. We have a hundred victims. Now, it
12 went up and down a little bit because one of them appeared not
13 to have actually had a settlement with a default. But one
14 hundred victims, seventeen law firms, a hundred lawsuits. All
15 of those settlements that were reached with Mr. Dias on behalf
16 of the various different SNFs, they all made sense predicated
17 upon the separate credit of each SNF and operating company at
18 the time that was being sued. All right? The agreements were
19 reached. And then they were all defaulted upon. Seventeen
20 law firms. Hey, John, what's going on here? So we appeared
21 in some of those lawsuits.

22 And then it became apparent that en masse, about
23 ninety SNFs were transferred, okay? And we had to figure out
24 where did they go to.

25 Now, the initial idea was we'll go from county to



Colloquy

1 county, sixty-seven counties in Florida, and covered those.
2 That didn't make any sense for that many fraudulent transfer
3 actions. So instead, the seventeen law firms and their
4 clients got together to pool their resources into one entity
5 to bring a lawsuit in one form, Miami, business court, circuit
6 court in in Miami, Florida. That was to preserve claims for
7 the claimants. No money changed hands. And there was no
8 change of ownership, control, or beneficial interests. That's
9 very important. The only thing that was added is standing in
10 one location. Okay? And at that point in time, we didn't
11 know would be in Atlanta.

12 Now, to be sure, we thought we'd be adding more
13 defendants, but we didn't add Mr. Landau. We didn't add Mr.
14 Whitman. We didn't add Formation Capital, the parents of the
15 parents or the parents of not just your debtors but the
16 transferees both sides, okay?

17 Now, we developed all of that before this bankruptcy
18 case was filed, right? So when we formed that entity, it was
19 very clear -- and you can see from the complaint in Miami, we
20 attached our assignment document. We have nothing to hide.
21 We attached the relevant bylaws, et cetera. And so they're --
22 the beneficial interest was the same.

23 Now the statute, if you read all of the cases that
24 were cited pedantically to somehow confuse the issue of
25 whether my client has standing, you will see that if an elder



Colloquy

1 person or anybody else has a settlement from a PI claim,
2 wrongful death claim, and they say, well, I'm due to get
3 100,000 a year for ten years, they can go to two businesses
4 that should be scrutinized carefully and say, well, listen, I
5 need 200,000 dollars now, so if you give me 200, can you
6 keep -- you'll keep the whole million-dollar relationship?
7 Well, that is a separation of ownership where you can see the
8 propensity to overreach.

9 That's not what's going on here. It's the exact
10 opposite. Every Wednesday, with minor exceptions, like even
11 last Wednesday while our building was being evacuated, we had
12 a regular Wednesday meeting with who, the seventeen law firms
13 who report on to their clients the status of this case. And I
14 sure am glad I thought of it. Now, the folks who don't know
15 about that are another twenty-eight million in settlement
16 agreement plaintiffs. And they have been hurt. And they
17 don't know anything about 2002(b). They don't even know about
18 this case, some of them, okay?

19 And then in addition to that, we have claimants with
20 unliquidated claims. They're getting notice. They have no
21 idea what 2002(b) is. They don't know what a release is in
22 this context or what Purdue Pharma says. Let's take a serious
23 look at this. Purdue Pharma was entered -- was issued --

24 THE COURT: I still haven't gotten -- I've heard a
25 lot, but I still haven't gotten the answer to my initial



Colloquy

1 question which was, isn't your -- isn't the ownership of these
2 claims by your -- by recovery, the LLC, based on the
3 assignment of those claims by their original holders to the
4 LLC? And doesn't that violate the statute unless --

5 MR. ANTHONY: No.

6 THE COURT: -- it's done from permission of the
7 underlying court?

8 MR. ANTHONY: No. And, Your Honor, the statute is
9 important to read. It relates to any situation where there is
10 a loss of beneficial ownership by the victim. There is no
11 loss of beneficial ownership by the victim in this case.
12 That's a canard. The clients --

13 THE COURT: I thought it just involved a transfer of
14 the claim.

15 MR. ANTHONY: No. The statute relates to not just
16 the transfer of the claim. It's the transfer of beneficial
17 ownership. If, for example, Joe Smith or the estate of Joe
18 Smith said, I'm going to transfer the claim and get five cents
19 on the dollar, that would be covered because then
20 theoretically, a claims trader for example in this case could
21 wait for a profit. But it is very clear, it is pellucid, that
22 that statute has nothing to do with this situation. Let me
23 step forward --

24 THE COURT: Are you saying that because you think it
25 just wasn't intended to address this situation?



Colloquy

1 MR. ANTHONY: No. It's because of the plain language
2 of the statute.

3 THE COURT: Okay.

4 MR. ANTHONY: I don't have to intend anything. I'm
5 reading the statute. And the case law all relates to
6 individuals and entities that transfer their beneficial
7 ownership, okay, and get some money and go out and spend it.
8 And that's something that Floridians don't want to see
9 happening, just like they don't want to see nursing home
10 conglomerates skate on liability to -- like what's going on in
11 this plan. It is very clear. We encourage the Court to take
12 a look at it. We could argue -- we could argue it in great
13 detail here.

14 I'd also say, Your Honor, that this contrived, late-
15 developed argument from the debtors -- let's take a look at
16 it. We know that McDermott appeared in my case prepetition.
17 In fact, they were party to these settlement agreements. They
18 were retained last February. I was retained in March of this
19 year. So here we are. Nobody ever questioned that until we
20 filed our motion to dismiss or convert this case. Okay? They
21 obtained --

22 THE COURT: There's no waiver of that statutory
23 obligation.

24 MR. ANTHONY: Well, Your Honor, it's a judicial --
25 it's a judicial estoppel flavor here, but the statute says



Colloquy

1 what it says.

2 I can also say, Your Honor, because the juice is not
3 worth the squeeze if anything else were to matter, it is very
4 clear from the conduct before and after the commencement of
5 the Miami action, we were authorized by counsel and by the
6 clients for the one hundred claimants to appear in the hundred
7 state court actions. And we did in some of them. After the
8 bankruptcy case was filed, we also filed proofs of claim on a
9 timely basis for each and every one of the one hundred
10 claimants individually because we thought there might be a
11 belt and suspenders issue here and that somebody at the last
12 minute when we filed objections to confirmation when there
13 wasn't a seat for us at the table, maybe it would come down to
14 that. So we did the belt and suspenders. The juice is not
15 worth the squeeze. We have covered it.

16 Now, we've we thought about it and we could. We
17 certainly don't want to complicate the process or overstate or
18 over dignify this issue. But the truth of the matter is this.
19 We could very easily tomorrow appear on behalf of -- as to one
20 hundred individual. We certainly know who they are. They get
21 reported to. Their proofs of claim have already been filed.
22 And we could even substitute in the in the complaint that the
23 debtors filed. We could go ahead and substitute them in. But
24 it was their idea who to sue. They made the allegations in
25 the adversary proceeding. And they were right. We are the



Colloquy

1 spokesman on behalf and the claim holder on behalf of those
2 claims. They can be freely reassignable back. The truth of
3 the matter is that the assignment says what it says. And it's
4 a matter of record in the state court action.

5 It is regrettable that under -- in Wauchula, they
6 have an argument -- they have a saying. Swallow an elephant,
7 choke on a gnat. This is a gnat. What's a real problem here
8 is substantive consolidation of entities that have very little
9 to do with each other. My fifty-five debtors giving up
10 releases that are extraordinarily valuable for five cents on
11 the dollar, we're not behind that. And bracketing my
12 client --

13 THE COURT: Well, your client can just check the opt
14 out box, can't they? I mean --

15 MR. ANTHONY: It's not as easy as that, Your Honor.
16 Number 1, the claims that we're talking about releasing,
17 wouldn't it be -- and this goes to something that U.S. Trustee
18 said eloquently, which is when you have all of these documents
19 that haven't been drafted yet, there's a real question as to
20 what sort of adequate information is that under 1125(a). I
21 can tell you that I'd like to see the release. I don't know
22 who's being released. I don't know what claims.

23 THE COURT: The release is in the plan.

24 MR. ANTHONY: Well, Your Honor, the release -- I'd
25 like to know if the release pertains to, for example, Mr.



Colloquy

1 Landau. Does it -- so we're still in the guessing -- and then
2 what are they valued at? We have a liquidation analysis
3 that's hard to figure out at best. There was none in the
4 first two iterations. The Thursday iteration is equally
5 problematic.

6 Now, Your Honor, you said at the last hearing when we
7 were talking about discovery and, well, you're on the
8 committee so you can get that information. Let me try to
9 address that issue because adequate information at the same
10 time as discovery is really slow. It's not -- you are
11 correct. I'm on the committee. But we have a confidentiality
12 agreement. We have bylaws. And so a lot of the things that I
13 know I can't repeat. Now, can you imagine somebody bringing
14 up a tomahawk ribeye and saying you can smell it, you can cut
15 it, you can put it in your mouth and chew it, you can't
16 swallow?

17 Well, the bottom line is, Your Honor, that
18 confidentiality agreement is a tough -- is a bitter pill for
19 me. These claims are valuable. They're very valuable. And
20 they're enough so that my real constituency, okay, which is
21 not just the ten million but the other twenty-eight million of
22 settlement agreement victims, it's really a double dip because
23 they suffered nursing home negligence as defined in Chapter
24 400 Florida statutes. And then they were told there'd be a
25 settlement. And at the same time the settlement is being



Colloquy

1 drawn up, the same individual wearing a different hat, Mr.
2 Diaz, as general counsel for Synergy, again, outside of the
3 scope of these debtors, is effectuating these transfers.
4 There's no chance they were going to get anything.

5 So when you look at the opt-out, we can go to a jury
6 in Miami and say, hey, folks, we have a mere continuation
7 claim. We have a fraudulent transfer claim. They'll
8 understand that. And we know that. But what might be a
9 little bit harder is some of the other claims that that
10 clearly survive under Purdue Pharma.

11 So trying to figure out what is the value of one
12 versus the other or what is the scope of the release, are you
13 saying that you're releasing me from a de facto merger claim,
14 a breach of fiduciary duty claim? I mean, it is difficult.
15 And it is not defined in that form release.

16 So just like you have the United States, the IRS
17 saying we're looking forward to seeing what comes out in the
18 next version, I'd like to see one final version. And I'd like
19 to have the next twenty-four days to do it because that's what
20 the rules say. And now, obviously, Your Honor has --

21 THE COURT: Well, if we're just conditionally
22 approving it and you can raise whatever objection you'd like
23 the, the disclosure at the confirmation hearing, aren't you
24 getting your twenty-eight days?

25 MR. ANTHONY: Well, Your Honor, I think -- I



Colloquy

1 understand the idea of, well, we're bootstrapping it, we're
2 going to preliminarily approve it.

3 THE COURT: We're just consolidating the two
4 hearings.

5 MR. ANTHONY: Well, I know. And it's --

6 THE COURT: Because the debtor, as you -- yeah.
7 Regardless of exactly where they are with respect to the DIP,
8 they're not far from running out of cash.

9 MR. ANTHONY: Right. Well, the DIP is --

10 THE COURT: And we can't have that.

11 MR. ANTHONY: Well, Your Honor, let's take a look at
12 that because, again, it's a bit of a canard. The plan that
13 you see in front of you talks about silos. So the debtors
14 have admitted that substantive consolidation of 282 entities,
15 some of which operate, some of which used to operate but they
16 lost all their assets on the way to Bankruptcy Court, and some
17 of which, I don't know, there's 150, I don't know.

18 And now there are people who know. In fact, you've
19 heard the creditors' committee and the debtors say that their
20 financial experts know. So I guess we can serve some
21 discovery on those experts, and they'll say exactly what we
22 might have been hearing. But the bottom line is this. If you
23 have a hundred million or more of nursing home victims or
24 their estates or their lawyers, not just in Florida, and
25 they'd like to be able to have one final approved disclosure



Colloquy

1 statement, not conditionally, that makes sense.

2 Not only that, the issues relating to Purdue Pharma
3 are big ones. The opt-in/opt-out to me is of constitutional
4 proportions. And I say that knowing that overall, it would be
5 accretive if we just went ahead and went with the
6 unconstitutional opt-out version. The opt-in version,
7 obviously, there's a dilutive effect by following what the
8 U.S. Trustee says, but it's the law just like it's the law
9 that you don't get to consolidate entities in the back door.
10 You see what happened here with the post-petition finance
11 filing in the beginning. A whole bunch of debtors that don't
12 benefit at all from post-petition finance somehow became
13 obligated. My debtors didn't get any money. They didn't --
14 they don't need anything. They have no assets. They have no
15 operations. They don't -- hence the motion to dismiss or
16 convert. The only thing they have is causes of action. We
17 wanted to bring them. And very tellingly, the first order of
18 business for the debtors as it related to PI victims is
19 putting a cork in that with 105(a)., And that's the problem.

20 So I don't -- I would have to say if we get to vague
21 and ambiguous releases, I have no real knowledge as to what --
22 other than reading the Supreme Court as to what those releases
23 say in or out, big issues, consolidation, the valuation of the
24 claims, the -- probably the biggest thing for my clients --
25 it's easy for us to say a month into the case keep your



Colloquy

1 nickel, I know what's going on here. We have fifty-five
2 separate debtors for -- relating to a hundred clients, a
3 hundred constituent claimants of mine, and keep it. Keep the
4 five cents. I want to retain all of my claims. But they
5 don't even value them. This is why the creditors' committee
6 said this was a very hard decision. And we came out saying
7 this is not a hard decision. This is something of
8 constitutional proportions. You can't consolidate something
9 like this. They need to deal with that. You need to value
10 the claims. It's not an opt-out. These are the -- this is on
11 the order of the problems. And we think we should come back.
12 That's what I could do in five days while I'm draining out
13 four houses. Thank you, Your Honor.

14 THE COURT: Before we get back to you, I should see
15 whether anybody else online wishes to be heard with regard to
16 the disclosure statement.

17 MR. WISLER: Yes, Your Honor. Jeffrey Wisler for
18 Cigna Health and Life Insurance Company.

19 THE COURT: Go ahead.

20 MR. WISLER: Your Honor, Cigna is a creditor or
21 party-in-interest in this case. Cigna and the debtors are
22 parties to approximately two dozen payor contracts under which
23 debtors' facilities are in-network providers under the Cigna
24 network. Cigna objects the disclosure statement because it
25 fails to provide adequate information about the disposition of



Colloquy

1 executory contracts.

2 So, Your Honor, just to briefly walk through what the
3 plaintiffs supposedly do say is they say all contracts will be
4 deemed rejected as of the effective date of the plan unless
5 they're an assumed -- capital A, capital C, Assumed Contract
6 under the assumed executory contracts list. So in other
7 words, if you're a contract counterparty, your contract will
8 be rejected unless you're on that list.

9 That list under the plan would be served with the
10 plan supplement. But expressly under the plan, that will only
11 be a preliminary list. And it will only be provided to the
12 extent available. I don't know what that means, but to me, it
13 means it may or may not be provided. But if it is provided,
14 it will only be provided in preliminary form.

15 The plan also says that list can be altered, amended,
16 modified, or supplemented at any time before the effective
17 date of the plan. The debtors also proposed to serve an
18 assumption notice, but that notice expressly states that
19 inclusion on that notice does not really mean anything because
20 the contract may or may not be assumed.

21 So, Your Honor, under this process, Cigna will not
22 know the proposed disposition of its contracts under the plan
23 before the voting deadline, before the objection deadline, the
24 plan objection deadline, before or at the plan confirmation
25 hearing or even whenever the effective date happens.



Colloquy

1 So there's two problems with this in a big picture.
2 First, the first problem is telling contract counterparties
3 that under the plan, your contract may be assumed or it may be
4 rejected is not adequate disclosure. Cigna won't know how to
5 vote. It won't know whether to object, or if it does, how to
6 object, what are we objecting to? we won't know what to do at
7 the plan confirmation hearing. Clearly the information
8 provided and to be provided under the plan and disclosure
9 statement on file does not provide adequate information to
10 contract counterparties.

11 The second problem, Your Honor, is just notice and
12 process. The plan is effectively a motion to assume and a
13 motion to reject. It moves to assume some contracts. It
14 moves to reject other contracts. But that motion doesn't tell
15 contract counterparties or the Court what contracts it wants
16 to assume or reject. Instead, what the debtors propose to do
17 is enter an order at plan confirmation that says the capital
18 A, capital C, Assumed Contracts will be assumed, and all the
19 others will be rejected. But it won't have provided the Court
20 or the counterparties or anyone notice of what those assumed
21 contracts are. And under their plan, they don't even have to
22 decide that until they get to the effective date.

23 And, Your Honor, this isn't just an academic problem
24 for Cigna. It's a real world problem because it affects
25 patients. There are patients in the debtors' facilities that



Colloquy

1 have Cigna coverage. Right now they know that their
2 supplemental care and any special procedures they get are
3 covered because these facilities are in network. But once the
4 payor contract is rejected or terminated, that immediately
5 severs that facility from the Cigna Healthcare network, which
6 means the facilities are no longer in network. And it means
7 the patients who have Cigna coverage no longer have an in-
8 network provider in their facility.

9 So let me address two more things, Your Honor. First
10 of all, this is not a motion. I'm not moving to compel the
11 debtors to assume. And I'm not trying to get them to reject.
12 I'm simply saying if you file a plan and disclosure statement
13 that says you're going to reject some contracts and assume
14 others, at some point, you have to tell the contract
15 counterparties what you're doing so that those parties can
16 both object and take whatever position they need to object to
17 the plan confirmation hearing.

18 I'd also add, Your Honor, that the fact that this is
19 just conditional approval doesn't help in this context.
20 Conditionally approving a process that leaves Cigna and other
21 contract counterparties with no idea how to vote or whether to
22 object to the plan, that's not something that can be remedied
23 or fixed at plan conformation.

24 So here's the solution, Your Honor. The disclosure
25 statement approval order should have a paragraph requiring the



Colloquy

1 debtor to provide Cigna with irrevocable notice of its
2 proposed disposition of the Cigna contracts at least three
3 days prior to the voting and objection deadline. That
4 irrevocability will be subject to the effective date and will
5 be subject to further court order if there's some reason to
6 change that notice.

7 And I recognize, Your Honor, that is certainly not
8 binding on the Court. But this has been done. This
9 particular provision has been put in many, many disclosure
10 statement approval orders in many jurisdictions to resolve
11 this issue for secret contracts. Does Your Honor have any
12 questions?

13 THE COURT: I don't. I certainly -- I read your
14 objection. And I understand what you're saying. I understand
15 why you think you need to know.

16 MR. WISLER: Understood, Your Honor. Thank you.

17 THE COURT: Anyone else?

18 MS. SOULARD: Good afternoon, Your Honor. Louisa
19 Soulard on behalf of the United States for the Department of
20 Health and Human Services.

21 We were a bit surprised by the inclusion of language
22 in the disclosure statement about the transfer of Medicare
23 provider agreements free and clear partly because the prior
24 version didn't talk about them at all and also because in
25 connection with the canceled sale hearing, we had provided



Colloquy

1 language to the debtors that described how the transfer
2 process works.

3 But in any event, given that this is a combined
4 disclosure statement in plan, we filed our limited objection
5 to avoid doubt as to our concerns but also to preserve our
6 rights. We anticipate working with the debtors and are
7 hopeful that we can agree on language for the confirmation
8 order that would obviate the need to revisit this issue. And
9 with our concerns and preservation of rights on record today,
10 we think that our limited objection is resolved as to the
11 disclosure statement.

12 THE COURT: Okay. Thank you. Anyone else on --

13 MS. FURR: Good afternoon.

14 THE COURT: Oh.

15 MS. FURR: Sorry. Good afternoon, Your Honor. Katy
16 Furr with Baker Donelson on behalf of Jacksonville Nursing
17 Home Ltd.

18 My client is the landlord for the Harts Harbor
19 facility in Jacksonville, Florida. My client has no objection
20 to the disclosure statement for purposes of today.

21 But for background purposes, for Your Honor, in the
22 record. My client had the same concerns that Mr. Wisler
23 raised about whether the Harts Harbor facility was being
24 assumed or rejected. Pursuant to recent conversations with
25 the debtors' counsel and representations made today at the



Colloquy

1 hearing by debtors' counsel, it's our understanding that the
2 debtor and the plan sponsor tend to assume this Jacksonville
3 lease at the Jacksonville facility.

4 With that, however, my clients would reserve their
5 rights as to whether the assumption of that lease can, in
6 fact, occur and whether adequate assurance adds to the items
7 identified in my client's response to the notice to the
8 contract parties is sufficient.

9 THE COURT: All right. So no objection to the
10 disclosure statement but reserving your confirmation
11 objections?

12 MS. FURR: Yes, Your Honor. Thank you for hearing
13 me.

14 THE COURT: Got it.

15 MR. BLUMIN: Your Honor, my name is Matt Bloom. I
16 represent the American Federation of State, County, and
17 Municipal Employees, AFL-CIO, or AFSCME as our union is more
18 commonly known. AFSCME is a labor union at 1.4 million
19 members who perform public service jobs throughout the United
20 States in both the public and private sectors.

21 As relevant to these cases, AFCME affiliates in the
22 state of Pennsylvania represent nursing home employees at
23 three different facility debtors in these cases, each under an
24 expired collective bargaining agreement. Those centers are
25 the Locust Grove Retirement Village, which is the debtor at



Colloquy

1 case 24-55602, the Manor at St. Luke Village, that's the
2 debtor in case 24-55685, and the Pavilion St. Luke Village,
3 which is a debtor in case 24-55623.

4 On September 4th, AFSCME filed an objection to the
5 initial disclosure statement on the ground that the debtors
6 had not provided adequate information about their intent to
7 assume or reject the collective bargaining agreements, which,
8 of course is covered by Section 1113 of the Code.

9 In light of the staffing shortage in the industry
10 which the debtors have stated to be one of the causes of these
11 cases, AFSCME felt that the treatment of the CBAs should be
12 clarified now. And that is especially true because the
13 stability fostered by the CBAs is of critical importance to
14 all stakeholders, not only the employees of these facilities,
15 but also in particular the residents whose health, welfare,
16 and safety on very life's work of AFSCME's members.

17 And, Your Honor, for context, the employees AFSCME
18 represents range from licensed practical nurses to certified
19 nursing assistants to other aides in these facilities. These
20 are not jobs that someone goes into without love in their
21 hearts. For the residents, this is mission-driven work.

22 But thankfully, I wanted to appear today to share
23 that I don't need to say anything more about AFSCME's
24 objection at this time because thanks to the productive and
25 respectful conversations between AFSCME, Mr. Simon and his



Colloquy

1 team, the second amended disclosure statement and plan filed
2 by the debtor on September 23rd make clear for the first time
3 that the reorganized debtor does intend to assume the CBAs in
4 these cases.

5 With everything else that is going on in these
6 incredibly complex cases, AFSCME has been impressed by the
7 attention and care given by debtors' counsel to the critical
8 issue of the CBAs in addition to all the other issues we've
9 heard about today. And so long as the revised documents filed
10 since Friday and any more revisions that may follow continue
11 to provide that CBAs will be assumed in the confirmation
12 order, AFSCME has no objection to the disclosure statement and
13 looks forward to seeing these facilities emerge from this
14 bankruptcy in a strong operating position so that AFSCME's
15 members can continue to do what matters most to them which is
16 to provide exceptional, compassionate care to the residents.

17 And so again, assuming the current plan holds, it's
18 AFSCME's view that the sooner these facilities can emerge
19 successfully from the cloud of bankruptcy, the better for all
20 involved. So thank you, Your Honor, and to the Court for your
21 time and again to the debtors' counsel for the productive and
22 caring collaboration in these cases at this point.

23 THE COURT: All right. Thank you, Mr. Blumin.

24 Anyone else online?

25 All right. Now, Mr. Simon, I think that turns it



Colloquy

1 back to you to address what you've heard.

2 MR. SIMON: Thank you, Your Honor. I'm going to
3 start -- if it's okay, we'll work our way down. But I'm going
4 to start with recovery court and Mr. Anthony.

5 As obviously Your Honor noted, we did file a motion
6 to strike. I don't want to get too deep into those issues.
7 We'll be here to address those. We have set that motion for
8 hearing for next Tuesday the 8th. The debtors do believe
9 there are very serious issues here. And it matters.

10 Mr. Anthony says -- tells us the juice isn't worth
11 the squeeze. This is the entity that filed a lawsuit in Miami
12 seeking to prosecute estate causes of action by his own
13 admissions. It's the entity that has served substantial
14 discovery on not just the debtors, but numerous third parties.
15 It's the entity serving on the creditors' committee. It's the
16 entity that filed a motion to vacate the DIP, which is really
17 just disguised as a challenge motion. We'll be filing a
18 response on that as soon as tomorrow. The entity that has
19 filed a motion to dismiss.

20 There have been substantial attorneys' fees
21 associated addressing these issues. And Mr. Anthony says it's
22 of no consequence. He made the argument today for the first
23 time that we've heard that the statute does not apply because
24 the statute relies on beneficial ownership. That's not what
25 the statute says. What his assignment does say is that



Colloquy

1 Healthcare Recovery Corp is the sole owner. So I think it
2 belies exactly what Mr. Anthony says. We can address that
3 next week. We can see his response, and we can respond
4 accordingly.

5 He says it doesn't matter because he can come back
6 tomorrow wearing a different hat. I'm not so sure. Mr.
7 Anthony signed proofs of claim on behalf of those claimants
8 but has refused discovery when asked about the representation
9 of those.

10 Mr. Anthony says we have the bylaws. We don't.
11 We've asked him. He has refused to comply.

12 So I don't want to get out over it. We can't predict
13 what will happen as far as the fallout. What is clear to the
14 debtors is that the law wasn't followed. And the irony of it
15 all, as Mr. Anthony talks about his seventeen tort plaintiffs
16 lawyers, is that this is the world they live in. These are
17 tort plaintiff lawyers not following Florida law as far as the
18 transfer of the assignment. So we're going to reserve our
19 rights on all of that, and we'll address that. My partner,
20 Mr. Bull, will be back next week to address those issues.

21 As far as the substantive issues I'll relay again
22 what Mr. Lawall said, what we said. These are two independent
23 fiduciaries supported by independent investigations on the
24 very claims that Mr. Anthony wants to bring. He says he wants
25 his causes of action. And at the same time, he says that



Colloquy

1 these are estate causes of action. So I don't even -- I don't
2 even know what that means. But if he were to go back -- I
3 guess I'm previewing the adversary proceeding in a few
4 minutes. But if he were to go back to Miami, he would be
5 prosecuting -- what he wants to do is prosecute those causes
6 of action up to the ten million dollars that Recovery Corp
7 believes it's owed, but he wants to do it in a way that pays
8 his creditors and not pays everyone. So he wants his cake and
9 he wants to eat it too.

10 The reality is Mr. Anthony has already admitted both
11 at the adversary proceeding as well as today that these are
12 estate causes of action. And what we've shown through the
13 investigation and the waterfall that's outlined in the
14 disclosure statement is that in order to do that, you need to
15 bring in north of ninety million dollars to return dollar one
16 to unsecured creditors. So Mr. Anthony either doesn't
17 understand the facts or probably more importantly doesn't want
18 to understand the facts.

19 He has made issues with respect to our discovery. We
20 can go into that in greater detail. We've served Recovery
21 Corp substantial discovery. We've served them with over 5,800
22 documents, including 5,500 emails, including emails from Mr.
23 Dias that he's asked for around the transfer of the operations
24 transfer agreement as well as the settlement agreements.

25 We've continued in good faith to provide discovery



Colloquy

1 even after we've raised these issues, recognizing that until
2 we have a court order with respect to his standing, we wanted
3 to continue the process. And we've worked with them, had
4 numerous meet-and-confers. In fact, one was just scheduled as
5 we were in court today.

6 One of the things that I'm just going to preview for
7 next week is, if Your Honor agrees with Mr. Anthony that he
8 does have standing, I think we're going to have to talk about
9 the scope of discovery. I don't want to do it today, but I
10 want to make sure that we're talking about an appropriate
11 level of discovery heading into confirmation which I think
12 should be focused on the confirmation standards, the committee
13 and debtor settlement that was reached. Mr. Anthony was in
14 the room for all of this. Normally that could require maybe a
15 debtor deposition or a committee deposition, but again, he's
16 been part of this.

17 So we'll address all the issues with respect to the
18 motion to strike next week. We believe many, if not all of
19 the facts that he raised are simply not true. They're not
20 true based upon the debtors' investigation. And they're not
21 true based upon the committee's investigation. Recovery Corp
22 has been part of this process. So to come in here and say
23 that we shouldn't move forward today, you made the point, Your
24 Honor, that I was going to make, which is those disclosure
25 issues are preserved. We've modified the -- we've continued



Colloquy

1 to modify the plan and disclosure statement. Those rights, to
2 the extent he has them at that point, will be preserved. And
3 we can address them at confirmation.

4 Moving now to some of the other objections, I'll
5 start with the U.S. Trustee. Your Honor, we have great
6 respect for the Office of the United States Trustee. We've
7 had these discussions with Mr. Adams throughout this week last
8 week. We understand they're fighting a battle coming out of
9 Purdue. I've raised before, I'll say again, I think the
10 Purdue court specifically said that they don't weigh into what
11 constitutes consent. And so to us, the case law prior to
12 Purdue, June 2024 or earlier, is the same as the case law
13 after. We understand the U.S. Trustee disagrees with that.

14 Last year, the issue was litigated in front of Judge
15 Cavender in the Envistacom case. And not to give him even
16 more kudos, but we thought it was one of the most thoughtful
17 and thorough opinions across the country on the topic.
18 Nevertheless, releases are important to the parties providing
19 the consideration. Releases are important to the United
20 States Trustee. And we believe we should have a full
21 opportunity to brief those issues before Your Honor. We don't
22 believe they're necessary to address today.

23 I'll note that that one-page caution plain-English
24 disclosure was done in coordination with Mr. Adams. And I
25 commend him because I think it is a form that should be



Colloquy

1 followed across the country.

2 We should be permitted to proceed in this fashion
3 with the ballots. We will see. We'll have additional
4 information as to what parties opted out in connection with
5 confirmation. And we believe that we should return, address
6 those issues. And we agree that Mr. Adams's rights are fully
7 preserved. We're not going to hold it against him at all.

8 Just briefly with DOJ, we are in discussions with DOJ
9 around the assumption of the Medicare provider agreements. We
10 have agreed with them that we're going to address those issues
11 in connection with confirmation. And hopefully we have a
12 consensual result. And if not, we'll be back to Your Honor to
13 address those issues. They are sticky and complicated. And
14 we'll continue to work with them as we have with other
15 parties. And we'll address. And thank you to Ms. Soulard who
16 has agreed to effectively preserve that issue.

17 I think the last one is with respect to Cigna. We
18 have been in discussions with Cigna. And obviously part of
19 this is the parties have been so hard at work up until
20 literally this morning and this afternoon on the settlement.
21 We recognize there's additional issues to address. We
22 recognize that there's a lot of work to go. Actually, one
23 issue I didn't discuss with the U.S. Trustee is the GUC trust
24 agreement. Same issue. We've been working hard. Now it's
25 time for us to focus on the issues relevant to closing the



Colloquy

1 transaction. The parties will be hard at work. We're in
2 discussions with Mr. Adams and the committee to provide a GUC
3 trust agreement in advance. We're hopeful to do that. I'm
4 not sure we can guarantee it, but we're hopeful. We think
5 it's pretty consistent with many cases in this Court and
6 around the country to have a plan and supplement date about
7 seven days before the voting deadline. And to the extent we
8 could get some of the documents out before that, we will do
9 that.

10 On Cigna, the plan sponsor needs some time and the
11 debtors need some time to figure out which contracts to assume
12 and which contracts to reject. I don't think there's an
13 intention to leave residents out in the cold with respect to
14 payor contracts like Cigna. There are 3,400 roughly executory
15 contracts out there. And so there's now a process to
16 determine what will be assumed, what will be rejected. Maybe
17 there is renegotiations with some of these counterparties.

18 I think the irony is that of those 3,400, we really
19 only had one, Cigna, saying that we need to provide that
20 determination sooner. I'm not sure I've ever seen -- I've
21 seen some instances where parties agree to an irrevocable
22 assumption of it. I don't think it's consistent with 365
23 which allows until I believe the effective date of a plan to
24 assume or reject. We'll continue to work with Cigna, but we
25 don't think that there should be an artificial deadline. If



Colloquy

1 they want to file a protective objection, they've essentially
2 already done it. And I think there's no reason why they
3 should have special treatment over anyone else.

4 Let me just check my notes and make sure I didn't mis
5 anyone or anything.

6 With that, I think that is -- I think I've addressed
7 all the objections. I'm happy to answer any questions at this
8 point.

9 THE COURT: All right. So what's your what's your
10 first -- what's your proposed resolution with respect to the
11 Cigna objection? Because I'm -- or where is there one?

12 MR. SIMON: I don't think we have a proposed -- can
13 you give me just one moment?

14 THE COURT: Sure.

15 (Pause)

16 MR. SIMON: Your Honor, I don't think we have a
17 resolution. I think just to kind of put a finer point, if the
18 contract, and this is any contract, is slated for assumption,
19 that party has the ability to come in and say you can't assume
20 it or the cure amount is different. And there's always an
21 ability for a debtor or reorganized debtor or a purchaser in a
22 363 context to say based upon those issues or based upon the
23 higher cure amount, based upon your concerns, either we want
24 to go forward or we don't.

25 And so I think what Cigna is proposing is that we



Colloquy

1 have an irrevocable date soon in the next few weeks and that
2 we can't backtrack off of that. And I don't think that gives
3 the debtors the flexibility it needs. Again, we're going to
4 work in good faith. We think we'll probably get there with
5 Cigna either on a renewed contract, on an assumed contract, or
6 no contract, and we'll try to give them as much heads up as
7 possible. But they're one of many. And we're going to be
8 working on all of that in the coming weeks.

9 THE COURT: Okay. What do they do about -- like, I
10 can kind of get you up to confirmation where -- so some
11 thoughts I guess, which is as to their claim, whatever their
12 claim may be, they either like their treatment under the plan
13 or they don't. I'm not sure that the -- I guess if the
14 contract gets assumed, they don't have to worry about their
15 claim. If the contract gets rejected, then they're either
16 satisfied with the payments to unsecured creditors or not. I
17 guess trying to figure out what to do about -- do you object
18 to adequate assurance or your cure amount if it says you're
19 going to be assumed? And how do you do that after
20 confirmation? Like, what do you do about --

21 MR. SIMON: I think what -- there are -- obviously,
22 since we had a sale process and we've noticed out the cure
23 issues to 3,400-plus parties, we have a substantial number of
24 cure notices or assumption-type pleadings on the docket.
25 Because the sale process turned into a plan process, we've



Colloquy

1 effectively reached out to all of those parties and said we're
2 going to address those in connection with plan confirmation.

3 What usually happens, again, either in a 363 or
4 otherwise, is that we often get loads of those objections. We
5 determine whether there is a desire to assume it or a desire
6 to reject it. If there's a rejection, those issues largely go
7 away. If there is an assumption, we're almost always working
8 with those counterparties. And very rarely do those issues
9 get litigated. I think in my career, I'm not sure I've ever
10 litigated one. We've usually continued to push it until the
11 point where we have an agreement, or if we don't have an
12 agreement, often it's rejected at that point.

13 So I would submit that this is pretty consistent with
14 other cases where you kind of work with the counterparty until
15 the point where you don't -- you have clarity one way or the
16 other. And I think that would be the proposal here which is
17 work with them. I think the effective date is probably the
18 end date. And I think that would be a fair end date because I
19 do think at that point, unless you have the consent of the
20 counterparty to continue the issue post effective date, we
21 would need to address those issues at that time. But I don't
22 think it's the confirmation date.

23 MR. WISLER: May I be heard, Your Honor?

24 THE COURT: You may.

25 MR. WISLER: Thank you, your Honor. Jeffrey Wisler



Colloquy

1 for Cigna.

2 Yeah, Your Honor. I could provide you -- I could
3 either read you the language that we proposed to the debtors
4 or provide you with -- and/or providing the citations to
5 disclosure statement words that address this issue.

6 But interestingly, Your Honor, Mr. Simon talked about
7 the Irrevocability. It's very similar language to what we're
8 proposing was in the sale procedures order in this case. It
9 required that at some point. The debtors had to provide
10 irrevocable notice of what they're doing. Somebody has to
11 give advance notice to these residents that their facility
12 might go out of network. It can't happen on the effective
13 date. It can't be that date and these potential negotiations
14 are still going.

15 Your Honor's order is going to say either these
16 contracts are to be assumed or rejected. Remember, Your
17 Honor, that these notices that the debtors proposed to send
18 out. Remember their language. Preliminary version, it can
19 alter, amend, modify, or supplement at any time up to the
20 effective date. At some point, don't they have to tell at
21 least the Court and the party affected what they're asking
22 Your Honor to approve? If they're asking Your Honor to
23 approve assumption, don't they have to tell you what contract
24 they're asking Your Honor to approve assumption of or
25 rejection? The decision has to be made before Your Honor



Colloquy

1 signs that order, if for no other reason, to give the contract
2 counterparty, in this case Cigna, the opportunity to be heard
3 on what exactly Your Honor is being asked to enter.

4 MR. SIMON: The only thing I'll say, Your Honor, is
5 that there's a disclosure statement hearing. The disclosure
6 statement sets forth a plan that may or may not be confirmed
7 by your Honor. That plan provides procedures with respect to
8 assumption and assignment of contracts. I think this issue
9 may be more appropriate for a confirmation hearing, but I
10 don't think it's appropriate for a disclosure statement
11 hearing.

12 MR. WISLER: And, certainly no one is going to hold
13 up plan confirmation of something this complex and this
14 heavily negotiated at that point because Cigna didn't get
15 notice. This issue has to be decided now because that is not
16 going to hold up confirmation when we get there in November.
17 And Mr. Simon would never let that happen.

18 THE COURT: It seems to me that if your assumption or
19 rejection hadn't been resolved to your satisfaction by
20 confirmation hearing, then you object to confirmation or you
21 object to the assumption of your contract, right?

22 MR. WISLER: Well, we have -- we don't know what to
23 object to, Your Honor. They're going to say to Your Honor
24 sign an order that says the debtor is hereby authorized to
25 assume -- to assume contracts, but they will not have told



Colloquy

1 Your Honor what those are. So Your Honor will be approving
2 something that no one will know what it's for. So what would
3 I be objecting to at that point? I wouldn't be objecting to
4 anything because they won't decide what they're going to do.
5 They don't have to decide under their procedures.

6 THE COURT: No, that's true. I don't know.

7 MR. SIMON: I think Mr. Wisler made my point for me,
8 right, which is there will be modification to the plan
9 potentially. There will be further discussions. And if that
10 is an issue that Mr. Wisler wishes to address at that point,
11 which is the procedure, not necessarily the scope of or the
12 assumption of his contract, but the procedures, if he doesn't
13 believe that is appropriate, that's a confirmation objection
14 that we can address at that time.

15 MR. WISLER: Your Honor, one more thing.

16 THE COURT: Yes.

17 MR. WISLER: It's not a -- it's not a procedures
18 issue. Imagine as I proposed earlier this is a motion to
19 assume -- or assume Exhibit A contracts or reject Exhibit B
20 contracts. And then it's Your Honor on whatever the
21 confirmation hearing date is. And they say, Your Honor, here
22 we're setting this out, we're going to leave Exhibit A blank
23 and Exhibit B blank. And we want Your Honor to sign the order
24 at the hearing saying you can assume the contracts on Exhibit
25 A or reject the contracts on Exhibit B. But that list is



Colloquy

1 going to remain blank before hearing, during hearing, and
2 after Your Honor actually signs the order.

3 THE COURT: Right.

4 MR. WISLER: That doesn't make sense.

5 THE COURT: Well, I'd say it's -- my experience would
6 be that that's entirely common. It's what happens in every
7 big case because they have 3,400 contracts, but they can't
8 possibly decide on all of them before confirmation. And so
9 they're either -- they're effectively authorized to assume
10 them all unless they'd like to reject them and there is just
11 some period of time after confirmation in which the rejection
12 could occur. And if you object to their assuming it, then you
13 should let me know by confirmation. Otherwise, you all can
14 continue to negotiate for another forty-five days-ish. And if
15 you can't get together, then it'll be rejected. What
16 you're -- the practical difficult you're talking about could
17 be addressed by saying that -- but it's not rejected for some
18 period of time after the debtor tells you so so that people
19 can -- people have time to adjust to the coming reject, all
20 right? I mean --

21 MR. WISLER: Your Honor, that's an interesting idea
22 because what -- the sales procedure order that Your Honor
23 signed and sent was they had to let us know thirty days before
24 a sale closing. So alternatively, what I suggest here is that
25 we set a -- the debtor has to notify statement of its final



Colloquy

1 decision X number of days prior to the effective date.
2 Otherwise, if you order the procedures that they are
3 proposing, they don't have to decide until the effective date
4 which would give these patients and Cigna zero notice.

5 MR. SIMON: So we're open to having discussions with
6 Mr. Wisler about that. We're open to having discussions if we
7 can't reach a resolution as to the appropriate timing at the
8 confirmation date as to how many days prior to the effective
9 date.

10 And I'll just note I wish I could say 3,400 contracts
11 are all equal in our eyes. They're not.

12 THE COURT: Sure.

13 MR. SIMON: The ones that relate to our residents and
14 the payor contracts are much more important.

15 THE COURT: Right.

16 MR. SIMON: And so we're going to make this issue a
17 priority. And we're going to continue to work with them. And
18 there's no one else who is more concerned about these issues
19 than the debtors.

20 THE COURT: All right. I think we're going to go
21 with what we have, subject to that -- our discussion on these
22 issues. Hopefully you all work it out between now and
23 confirmation.

24 About the DUC trust agreement --

25 MR. SIMON: Give me just one moment.



Colloquy

1 THE COURT: Sure.

2 MR. SIMON: Your Honor, we've made a little progress.
3 We have agreed -- the DUC trust agreement is largely in the
4 hands of the creditors' committee. They're going to be the
5 ones drafting it. And they have agreed that we can provide at
6 least a draft filed on the docket at a week before the
7 original deadline. So the plan supplement deadline, there's a
8 number of documents on the plan supplement.

9 THE COURT: Right.

10 MR. SIMON: That's October 28. So we would commit to
11 an earlier day with respect to the DUC trust agreement,
12 recognizing that that document and the plan supplement
13 documents generally we'll file in the version that they're in,
14 but they will be continuing to be modified as the process
15 unfolds. And so we have agreed to with the committee, maybe
16 the U.S. Trustee, October 21st for that document since that's
17 an important document that Mr. Adams has identified.

18 THE COURT: All right. Mr. Adams, is that --

19 MR. ADAMS: Your Honor, we believe that fourteen days
20 is much better than seven days.

21 THE COURT: Okay.

22 MR. ADAMS: Although I don't have authority to agree,
23 I agree that that is much more time. We appreciate the
24 concession. And we do think it would go far towards giving
25 more notice to parties of potential issues.



Colloquy

1 THE COURT: Right. And everybody understands that
2 obviously they'll do the best they can to file what they think
3 is a perfectly final document but then other people will read
4 it and they will all disagree.

5 MR. ADAMS: We understand it'll be before the Court
6 at confirmation.

7 THE COURT: Yes. There will be a process. And it'll
8 probably a slightly -- at least slightly different document by
9 the time we get to confirmation. All right.

10 Have we left out anybody's objections other than Mr.
11 Anthony?

12 MR. SIMON: Not that I'm aware of.

13 We continue to work with the IRS and Ms. Jones.
14 We'll work with her after this for any supplemental documents.
15 But we're not aware of any material issues.

16 THE COURT: All right. And with regard to the opt-in
17 issue, I think that's a confirmation issue that -- like, is
18 that -- the debtor is taking some on a couple issues. First,
19 obviously, to the extent somebody ultimately -- we ultimately
20 determine that inadequate disclosure was given because we're
21 conducting a combined hearing, there may be a delay. If they
22 don't win that, then the same will be true of the opt-in
23 issue. So --

24 MR. SIMON: Given the month of September, Your Honor,
25 we're happy to take this day-by-day.



Colloquy

1 THE COURT: Well, very good. Otherwise, I don't
2 think I've heard anything that isn't a confirmation issue
3 today. So we will conditionally approve the disclosure
4 statement and then send out ballots and see how the creditors
5 feel.

6 MR. SIMON: Thank you, Your Honor. And we do have --
7 I apologize. We do have, as I noted, a modified version.
8 What we'll plan to do -- and we're happy to hand you a
9 version. But what we'll plan to do is file on the docket a
10 notice of solicitation version, the solicitation version
11 that's going to go out to creditors. And we'll also file a
12 blackline as compared to the version that we filed last
13 Thursday night.

14 THE COURT: Any highlights from the newest version
15 that I ought to be aware of?

16 MR. SIMON: Honestly, no. A lot of it relates to the
17 splitting the claims and the joint and several language. But
18 materially, nothing has changed that I'm aware of. And I know
19 Mr. Lawall and Ms. Kovsky have been knee-deep in this as well.
20 So I think it's largely cleanup and largely nonsubstantive as
21 opposed to material changes.

22 THE COURT: All right. Well, we'll -- if you'll,
23 yeah, file a redline on the docket, we can take a look at
24 that. But I'm taking your representation of that that's what
25 it is.



Colloquy

1 MR. SIMON: I'm happy to provide --

2 THE COURT: Well, go ahead and send it out. And take
3 the temperature of the creditor body on all these issues.

4 MR. SIMON: Okay, great. Well, we appreciate it.
5 And we appreciate Your Honor's flexibility on November 14th
6 for a confirmation hearing.

7 THE COURT: That works for us.

8 MR. SIMON: Great.

9 THE COURT: We haven't addressed the adversary
10 proceeding.

11 MR. SIMON: We have not.

12 THE COURT: Just --

13 MR. SIMON: I'm happy to shift gears at this point if
14 Your Honor would like.

15 THE CLERK: Your Honor, just before we -- what time
16 do you want that hearing for confirmation? Would you like it
17 at 9:30 or in the afternoon.

18 THE COURT: I don't know. I would anticipate we're
19 going to need all day, but you tell me. We can start whenever
20 you'd like. I've got the whole day.

21 MR. SIMON: I think -- I think --

22 UNIDENTIFIED SPEAKER: All day is probably a good
23 idea.

24 MR. SIMON: All day is probably a good idea. So 9:30
25 we'll --



Colloquy

1 THE COURT: Yeah. That seems sensible.

2 MR. SIMON: Okay. And hopefully it will only take
3 one day. That will be the goal.

4 THE COURT: Yes. And we rolled out some other days
5 to use, so we have some days in that general vicinity if we
6 need to go --

7 MR. SIMON: Thank you, Your Honor.

8 Turning to the adversary, I will be brief. I think
9 we've addressed some of these issues here. I'll just note for
10 the record that obviously we reserve all rights with respect
11 to the issues raised in your motion to strike. We'll be back
12 before Your Honor next week on --

13 Your Honor, we had a bit of a debate with Mr. Anthony
14 several weeks ago who viewed this hearing, the adversary
15 proceeding hearing, on September 30th. We viewed it as more
16 or less a status hearing. We viewed it as a check-in as to
17 where the cases were from when we were heard on it on July
18 25th. Mr. Anthony believed initially that today would be a
19 hearing on the merits of the money in the action. He
20 threatened that it would be a lengthy evidentiary hearing with
21 many witnesses. And we disagreed.

22 And on July 25th, we were back here in the adversary.
23 Mr. Bull argued the adversary. And Your Honor entered an
24 order. That's docket 16 in the adversary. And I'm just going
25 to quote a little bit from that order that Your Honor granted.



Colloquy

1 It stated that Healthcare -- I'm going to call them Recovery
2 Corp just for ease. Recovery Corps cannot proceed with the
3 Recovery Corps action without violating the automatic stay,
4 because in taking any action in the Recovery Corp action,
5 Recovery Corp will be prosecuting claims owned by the
6 bankruptcy estates of debtor-defendant or it will be
7 prosecuting claims against those bankruptcy estates. These
8 bankruptcy cases are in a critical period. The debtors are
9 pursuing both the potential sale of substantially all their
10 assets in a plan. The sales process is presently set to be
11 concluded by the middle of September. And with the plan now
12 filed, a plan process could also be concluded in an only
13 slightly longer timeframe.

14 As far -- and I'm skipping a little bit, so bear with
15 me. I am on page 5 of 17 on docket 16. As far as it can be
16 assessed now, the debtors have a substantial likelihood of
17 success on the merits in this case because it appears likely
18 that these cases will reach a successful conclusion. All the
19 causes of actions asserted in the Recovery Corp action are
20 also among the kinds of plans the Official Committee of
21 Unsecured Creditors is investigating with a deadline in
22 September. Recovery Corp is on the committee and thus will be
23 participating in the investigation of these and other claims,
24 further mitigating any prejudice from delay. Further, the
25 committee should be given the chance to seek permission to



Colloquy

1 pursue claims like the ones asserted in the Recovery Corp
2 action, assuming the debtor is determined not to pursue any
3 such claims in the first instance.

4 And then Your Honor goes on in paragraph 2 to say
5 that accordingly, the automatic stay is hereby extended to the
6 claims and causes of actions asserted against the nondebtor
7 defendant in the Recovery Corp action until the earlier of A,
8 confirmation of a Chapter 11 plan with respect to the debtor
9 defendants; B, dismissal of the Chapter 11 cases of the debtor
10 defendants; or C, September 30th, 2024, at which point a
11 hearing shall be held in this court to determine whether
12 additional relief is necessary or appropriate.

13 Your Honor, we would submit that additional relief is
14 necessary. We have just come out of a very intense and
15 critical period, to use your words, of this case. And Mr.
16 Anthony is allowed at this juncture to pursue the Miami
17 action. All of the parties' hard work to get to this point in
18 the case is for naught. What the debtors have concluded and
19 what the creditors' committee has concluded is that the claims
20 do have value. And the value has been settled as part of the
21 plan that is before Your Honor. And as part of that
22 settlement, we wish to proceed with confirmation in a manner
23 that maximizes the value of the debtor's mistakes. And we
24 would ask Your Honor to keep the preliminary injunction in
25 place at least until the confirmation hearing and allow the



Colloquy

1 debtors and the committee to work -- to proceed forward to
2 maximize the value of all of these matters.

3 THE COURT: All right.

4 MR. ANTHONY: Well, Your Honor, let's start at the
5 beginning. The case that we brought in Miami was brought
6 prepetition. So the insinuation that we might have been
7 violating the stay when we filed it is a bit anachronistic.

8 Then we told the debtors -- we also told the
9 nondebtors that we intended to take no action absent an order
10 of the Court. We meant that before they filed the complaint
11 unnecessarily. And we still mean that now.

12 Now, at different points along the way in the last
13 four months, we said we might need to do some discovery. And
14 amazingly, we were told that you're not -- you don't have Rule
15 26 conference and 105(a) injunction hearing. That was a
16 surprise to Mr. Lafalce, my partner, and I. But we've dealt
17 with that. And obviously, we do not expect an evidentiary
18 hearing today. But we expected a status of sorts and also to
19 deal with whatever was filed at the last minute which turned
20 out to be 170-or-so-page combined paper that the debtors
21 intend to travel to confirmation with.

22 Now, it was -- Your Honor got it right. It was a
23 crucial, sensitive stage in the case. Amazingly for the first
24 time that I can think of, major assets worth tremendous value
25 were marketed and not a single bidder. Very strange. We know



Colloquy

1 what they were worth, but no bidders.

2 Now, so now what you have is effectively a going-
3 forward plan where they get to retain these assets. You have
4 these claims that we know are valuable. The debtors are now
5 saying they're valuable. Good. Well, what we had thought is
6 maybe the creditors' committee would submit subcon, not subcon
7 of 282 debtors that were carefully manicured to be separate
8 and distinct a couple years ago, but subcon of the transferors
9 and the transferees, the nondebtors. And point of fact, we
10 know that 1123(a)(5) -- (a)(3) contemplates just that.

11 So we've participated within this process. In fact,
12 when the issue came up as to how are we going to get
13 discovery, we filed our objections to confirmation early
14 because the plan didn't really say much. And then we filed a
15 motion to dismiss or convert, again, participating within the
16 framework of these jointly administered cases, saying our 55
17 debtors have their own assets, liabilities -- I'm sorry, the
18 assets being claimed liabilities. They don't have a business
19 operation. But for the way they were filed by the debtors'
20 management, they really wouldn't be Chapter 11s. And, of
21 course, we now know that the debtors acknowledge that. They
22 say different silos. And we just say 282 silos. We only care
23 about 55 of them, the debtors that we look to. And that
24 really is the only way to look at these because another
25 business entity that might be related, well, Formation Capital



Colloquy

1 is related, but they're not in Chapter 11. So I don't know
2 why we'd be worry about an LLC or Georgia or North Carolina
3 when we're talking about single assets, single assets, no
4 consolidation.

5 Where does all this lead me, Your Honor? As we've
6 said pretty much from the beginning -- in fact, as we've said
7 from the petition dates, we're happy to go with the order of
8 the Court for this. That's not a concession. That's not an
9 admission.

10 I do want to say that the Third Circuit Emoral case
11 is worth noting besides speaking about Purdue Pharma. The
12 interplay between the augmented estate and 541(a) and the
13 strong-arm powers, 544(b), and the way you have direct and
14 derivative claims parsed, and when the petition is filed, a
15 creditor such as ours will lose standing with respect to
16 certain claims, those are extremely well defined. I have
17 cited one case for you, Emoral, which does not go the way I
18 wish it did. But out of intellectual sincerity, we cite this
19 law because the ambiguity created about, well, we're going to
20 release everybody and we're going to release them on behalf of
21 the estates without defining what the difference is, that is
22 the problem here.

23 So what I'd say is we have no problem with continuing
24 the TR. I don't think it's necessary just like I said last
25 time. The burden is nonexistent. We didn't anticipate



Colloquy

1 fighting on two fronts. My clients don't have a carve-out of
2 the estate for attorneys' fees. We're doing this the old
3 fashioned way. But we've got to be efficient, and this is one
4 way to be efficient. So I don't really see any problem with
5 continuing this over to confirmation.

6 At that point -- this is not the same set of cases
7 that was at the last hearing, a space holder plan was filed
8 while I was driving here. Now we've got the plan that came up
9 the end of last week. That has a lot of problems in it, all
10 the problems we expected, but now they're there in black and
11 white. So we're happy to come back at the confirmation
12 hearing, raise all these issues. And in the meantime, the
13 Miami case hasn't gone anywhere.

14 I do want to say, Your Honor, the Miami complaint
15 reflected what we knew in March of this year, a very short
16 period of time after I learned about this case. If I had to
17 do it again, we'd add an awful lot of additional defendants.
18 And we certainly have already offered in court and elsewhere
19 in the law firms I worked with -- and I would have been
20 delighted to take this for the entire estate and get the
21 appropriate waivers, but we think that these claims are
22 extraordinary valuable and valid. And I wouldn't want
23 anything about the Miami action to make it seem like it's
24 apples and applies. There were some claims that were brought
25 at the time based upon what we knew.



Colloquy

1 We know an awful lot more. I don't want to
2 trivialize what we now know by pointing to a seven-count
3 complaint that alleged fraudulent transfer, constructively
4 fraudulent transfer under the state UFTA. Mere continuation,
5 alter ego, de facto merger, their breach of contract,
6 deceptive and unfair trade practices, we've brought the claims
7 that we thought we had at the time in good faith. There are
8 many more that the estate has based upon this direct
9 derivative and the concept of the augmented estate. And there
10 are many more that my clients would have, that Recovery Corp
11 would have and that the other twenty-eight million dollars of
12 similarly situated settlement claims would have if they looked
13 at it. And we hope they do.

14 THE COURT: Okay.

15 MR. ANTHONY: Thank you, Judge.

16 MR. SIMON: Your Honor, I don't have anything to add.
17 I believe Mr. Anthony conceded that he's okay with the
18 continuation of the automatic stay. And that's why we're
19 here. We'll address whatever issues that come up.

20 THE COURT: Okay. I would say that you read the
21 findings from the first hearing other than the sale process
22 not being -- not continuing -- the circumstances remain about
23 the same which is we're still in a critical part of this case.
24 The critical part has been extended a little bit and in large
25 part because of the time it took to have a mediation and reach



Colloquy

1 agreement at least between some of the parties. So I don't --
2 and given the fact that currently the constituted plan
3 addresses the same claims that are at issue in the Florida
4 litigation, it wouldn't make any sense to permit that to go
5 forward at this time.

6 So I'll extend the preliminary injunction I think
7 through November 15th, which is the day after -- or at least
8 it might be the second day of the confirmation hearing for all
9 I know.

10 MR. SIMON: Let's hope not, Your Honor.

11 THE COURT: But obviously, further consideration as
12 to whether it should be further extended at that time. But --
13 and a lot of it will have to do with how the plan -- how the
14 plan goes. And of course, if Mr. Anthony is super convincing
15 and the cases get dismissed as to -- because there is a -- the
16 stay terminates, among other things, if cases get dismissed.
17 So --

18 MR. SIMON: Correct.

19 MR. ANTHONY: And, Your Honor, just to clarify, we
20 only want 55 cases dismissed.

21 THE COURT: No. I understand.

22 MR. ANTHONY: All the OpCos, everybody else --

23 THE COURT: Your desires are perfectly clear. But
24 we'll just essentially extend the stay that exists through
25 November 15th, similar order. And again -- well, yeah, put



Colloquy

1 with a -- I guess with the hearing about continuing it on the
2 14th, the same time as confirmation just so we don't forget to
3 take it up then.

4 MR. SIMON: Sure. Would you like -- would you like
5 us to prepare that form of order?

6 THE COURT: If you wouldn't mind.

7 MR. SIMON: We will do that. Thank you, Your Honor.

8 I think just from a housekeeping perspective, we also
9 did have 365(d)(4) motion to extend the time period to assume
10 or reject. We have not -- there was one objection filed by
11 Ms. Furr. We have had further discussions with her. She has
12 withdrawn it. And so today is that deadline. SO we would
13 ask --

14 THE COURT: Right. And you were extending that
15 through December 30th? Do I remember that right?

16 MR. SIMON: I'm looking to Ms. Keil. I believe
17 that's correct. Yes.

18 THE COURT: The keeper of the details.

19 MR. SIMON: And obviously, the intent, and this is
20 the discussion I had with Ms. Furr, is that all forty-three
21 are being assumed through this process. So she is indeed the
22 keeper of the details.

23 THE COURT: Very good. Well, in the absence of any
24 objection, the motion otherwise seems well taken. I will
25 grant it if you present an order.



Colloquy

1 MR. SIMON: Thank you, Your Honor. And just a
2 preview of coming attractions, we will be filing an
3 exclusivity motion today more just kind of in the ordinary
4 course as we proceed. We do have 180 days to solicit the
5 plan, but I believe today is day 120. So we'll have that on
6 file. We'll be, as I noted, filing an objection to the --
7 what I'll call the motion to vacate the DIP. I know Omega
8 filed one just before the hearing. And we'll be filing that.

9 And then we have a fairly extensive agenda next
10 Tuesday, October 8th. So we'll be back on the motion to
11 vacation the DIP, the motion to strike. I believe there are
12 six relief from stay motions. We're going to be filing an
13 omnibus response to that I believe later today as well. So
14 you've gone about two months without seeing us, and now you're
15 going to be sick of us pretty quickly.

16 THE COURT: It's a pleasure having you all here.
17 Anything else we need to discuss?

18 THE CLERK: (Indiscernible).

19 THE COURT: Which is what?

20 THE CLERK: Which is (indiscernible).

21 THE COURT: Well, there --

22 THE CLERK: (Indiscernible).

23 THE COURT: The motion is granted.

24 MR. SIMON: Keeper of the details, right?

25 THE COURT: Yes, exactly.



Colloquy

1 MR. SIMON: I don't believe we have anything else,
2 Your Honor. Obviously, we appreciate your time and also your
3 flexibility continuing multiple hearings to get to this point.
4 So on behalf of everyone, I think we're very appreciative of
5 the Court and chambers and everyone involved.

6 THE COURT: That's relatively the easy work. You all
7 have done a lot of the hard work. And you will continue to I
8 expect.

9 All right. Well --

10 MR. SIMON: Thank you.

11 THE CLERK: That completes all matters. All rise.

12 (Whereupon these proceedings were concluded at 4:25 PM)

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Colloquy

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

I, Michael Drake, 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.



October 1, 2024

MICHAEL DRAKE

DATE

AAERT Certified Transcriber, CER-513, CET-513

