

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE: Case No.: 24-55507-PMB  
LAVIE CARE CENTERS, LLC, et. al., Chapter 11  
Debtor. Cases Jointly Administered

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**MOTION TO ALLOW REMOTE  
TESTIMONY AT CONFIRMATION HEARING**

Pursuant to Federal Rule of Civil Procedure 43(a) and other applicable law, Healthcare Negligence Settlement Recovery Corp. (“Recovery Corp.”), a creditor and party in interest in these above-captioned chapter 11 bankruptcy cases (these “Reorganizations”) initiated by the 282 chapter 11 debtors (collectively, the “Debtors”), hereby requests the order of this Court authorizing Nathan P. Carter, Esquire, William A. Dean, Esquire, Scott P. Distasio, Esquire, Jon M. Herskowitz, Esquire, Sara B. Mallard, Esquire, Michael J. Rotundo, Esquire, Stephen Watrel, Esquire (collectively, the “Recovery Corp. Fact Witnesses”), and Lisl A. Unterholzner, CPA, ABV, CFE (the “Recovery Corp. Expert Witness”), to testify remotely via Zoom or other video conferencing platform at the confirmation hearing on the “Debtors’ Second Amended Combined Disclosure Statement and Joint



Chapter 11 Plan of Reorganization” [Doc. 481] (the “Combined Plan Disclosure Statement”) scheduled to occur on November 14, 2024 (the “Confirmation Hearing”).

1. Recovery Corp. is a Florida corporation that holds one hundred (100) claims originally asserted by as many Florida-based claimants (collectively, the “Florida Claimants”). The Florida Claimants’ claims originally arose from nursing home negligence at a series of SNFs formerly owned and/or operated by a subset of the Debtors (collectively, the “Florida DivestCo Debtors”).

2. After their claims arose, each of the Florida Claimants retained one of seventeen (17) law firms (collectively, the “Claimant Firms”) specializing in the representation of nursing home negligence victims with claims arising under Florida Statutes §§ 400.022, 400.023 and other applicable law. The Claimant Firms commenced lawsuits against corresponding Florida DivestCo Debtors; however, they each ultimately negotiated separate settlement agreements with the corresponding Florida DivestCo Debtors (the “Settlement Documents”). In the lawsuits and settlement negotiations, all Florida DivestCo Debtors were represented by Dan Dias, Esquire, Antonio A Cifuentes, Esquire, and the law firm of Dias & Associates (collectively, “Dias & Associates”).

3. Although the Claimant Firms and Dias & Associates negotiated scores of separate Settlement Documents for all the Florida Claimants with all the Florida

DivestCo Debtors, they all utilized the same basic settlement agreement and release form. All settlements were predicated upon payments made over time and avoided risk of the entry of a judgment against any of the Debtors. The Florida DivestCo Debtors agreed to the negotiated liquidated amounts of every settlement with every injured or killed nursing home resident that now makes up the Recovery Corp. group. Dias & Associates affirmatively represented to the Claimant Firms that if they were to agree to sums that were lower than the amount truly owed, and spaced payments over time, then the SNFs in question would be able to fund settlements as a line-item expense going forward rather than seek chapter 11 protection. This was part of a very deliberate pattern of misrepresentation.

4. During early 2024, the Claimant Firms retained the undersigned on behalf of the Florida Claimants to collect on the Settlement Documents that the Florida DivestCo Debtors had breached by failing to make the agreed payments. The decision to form Recovery Corp. reflected a practical response to a seemingly synchronized set of transfers of the Florida DivestCo Debtors' SNFs to corresponding new operators.

5. On June 2 and 3, 2024, the Debtors commenced these Reorganizations.

6. On October 1, 2024, the Court entered its "Order (I) Conditionally Approving Disclosure Statement, (II) Scheduling Combined Hearing For November 14, 2024 At 9:30 A.M.(Prevailing Eastern Time), (III) Establishing Procedures For

Solicitation And Tabulation Of Votes On Plan, (IV) Approving Certain Forms And Notices, And (V) Granting Related Relief” [Doc. 480] (the “Scheduling Order”) scheduling the Confirmation Hearing on the Combined Plan Disclosure Statement.

7. The Recovery Corp. Fact Witnesses are representatives of the Claimant Firms that negotiated the Settlement Documents with Dias & Associates.

8. All of the Recovery Corp. Fact Witnesses are located in the State of Florida. Moreover, the Recovery Corp. Fact Witnesses are all trial attorneys and members of the Claimant Firms. The Recovery Corp. Fact Witnesses have professional and personal commitments that make it difficult, or in some instances, impossible for them to travel to Atlanta, Georgia to provide live testimony at a trial that was scheduled on forty-five (45) days’ notice.

9. Recovery Corp. is endeavoring to have one corporate representative physically in the Courtroom, and will work with the Creditors’ Committee and the Debtors to avoid the presentation of redundant testimony from the Recovery Corp. Fact Witnesses.

10. The Recovery Corp. Expert Witness is (i) accredited in Business Valuation by the American Institute of Certified Public Accountants, (ii) a Certified Fraud Examiner, and (iii) a Certified Public Accountant. The Recovery Corp. Expert Witness is expected to testify regarding the value of the Florida DivestCo Debtors’ SNFs at the time they were transferred.

11. The Recovery Corp. Expert Witness is located in Tampa, Florida, and as a professional expert witness, has a full range of professional commitments that make it difficult for her to travel to Atlanta, Georgia to provide in-person testimony. Further, the Recovery Corp. Expert Witness will need to be compensated for her services. Accordingly, Recovery Corp. will incur significant expense if the Recovery Corp. Expert Witness is required to travel to Atlanta to provide live testimony at the Confirmation Hearing.

12. To authorize remote testimony in a world of changing technology, Federal Rule of Civil Procedure 43(a) provides as follows:

For good cause in compelling circumstances and with appropriate safeguards the court may permit testimony in open court by contemporaneous transmission from a different location.

13. Courts have found that good cause exists to allow remote testimony of witnesses living beyond the subpoena power of the court based on the undue inconvenience of forcing a witness to testify in person. See Walsh v. Tara Construction, Inc., Case No.: 19-cv-10369-AK, 2022 WL 1913340 (D. Mass. Jun. 3, 2022) (where the court found good cause to allow a key witness to testify remotely at trial because he lived beyond the subpoena power of the court); Aoki v. Gilbert, Case No. 2:11-cv-02797-MCE-CKD, 2019 WL 1243719 (E.D. Cali. Mar. 18, 2019) (allowing a witness who lived more than 100 miles from the courthouse to testify remotely because the adequate safeguards would be in place and the witness would

be able to testify and be subject to cross-examination while preserving the integrity of the trial process); F.T.C. v. Swedish Match N. Am., 197 F.R.D. 1 (D. D.C. 2000) (where the court allowed a key fact witness to testify remotely because there was no practical difference in allowing him to testify remotely when he lived beyond the subpoena powers of the court).

14. Specifically, in Pathri v. Kakarlamath, the court, in guidance from the Federal Rules of Civil Procedure, stated various factors that should be considered in determining whether to allow a witness to testify remotely: (1) the court must evaluate the witness' importance to the proceeding; (2) the severity of the factual dispute to which the witness will testify; (3) whether the factfinder is a judge, who is better able to evaluate witnesses, or a jury, who is less experienced; (4) the comparative costs in allowing for remote testimony versus the costs in compelling in person testimony; (5) the delay caused by insisting on the witness's physical appearance versus the speed and convenience of allowing them to testify remotely; (6) the foreseeability of the witness' inability to be present in court; and (7) the witness' difficulty in appearing in person. See generally Pathri v. Kakarlamath, 462 N.J. Super. 208 (N.J. App. Div. 2020). Analysis of these factors militates in favor of allowing the Recovery Corp. Fact Witnesses and Recovery Corp. Expert Witness (together, the "Recovery Corp. Witnesses") to appear remotely at the Confirmation Hearing.

15. The undersigned conferred via e-mail with counsel for the Debtors on October 3 and 4, 2024, regarding the relief sought in this motion and the Debtors have yet to convey their position on the matter.

WHEREFORE, Recovery Corp. respectfully requests the order of this Court granting this motion and authorizing the Recovery Corp. Witnesses to testify remotely at the Confirmation Hearing, and providing for all such appropriate relief.

Dated this 7th day of October, 2024.

/s/ John A. Anthony

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on October 7th, 2024, by electronic means to:

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