Docket #0633 Date Filed: 11/06/2024

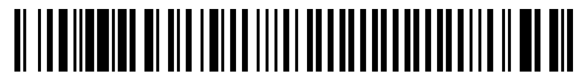
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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

UNITED STATES OF AMERICA'S OBJECTION TO SECOND AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF REORGANIZATION

1. The United States of America, on behalf of the United States Department of Health and Human Services ("HHS") and the United States Department of Veteran Affairs ("VA"), objects to the *Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Dkt. No. 481] ("Proposed Plan"). This Court cannot confirm the Proposed Plan for six reasons. **First**, the Proposed Plan seeks to assume and/or transfer the Debtors' Medicare Provider Agreements ("Medicare Provider Agreements") with HHS free and clear of all liability, contrary to Medicare law. **Second**, the Proposed Plan impermissibly transfers contracts with the United States without its consent in violation of applicable non-bankruptcy law and section 365(c)(1). **Third**, the Proposed Plan purports to settle the United States' claims against the Debtors. **Fourth**, the Proposed Plan contains impermissible third-party releases, and the United States opts out of any third-party releases. **Fifth**, the Proposed Plan impermissibly restricts the United States' setoff and recoupment rights. **Sixth**, the Proposed Plan purports to vest exclusive

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

FACTUAL AND PROCEDURAL BACKGROUND

2. On June 2, 2024, each Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division.

3. The Debtors operate 43 skilled nursing and independent living facilities, which receive revenue from Medicare, Medicaid, and other third-party and private payors. *See Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Dkt. No. 17], ¶¶ 20, 22.

4. Certain Debtors are parties to Medicare Provider Agreements with HHS.

5. Certain Debtors are parties to federal contracts with the United States, including with the VA.

6. On July 23, 2024, the Debtors filed the Debtors' Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization [Dkt. 273]. On September 17, 2024, the Debtors filed the First Amended Combined Disclosure Statement Joint Chapter 11 Plan of Reorganization [Dkt. 438].

7. On October 1, 2024, the Bankruptcy Court conditionally approved the disclosure statement portion of the Proposed Plan and scheduled a combined hearing on November 14, 2024, for final approval of the disclosure statement portion of the Proposed Plan and confirmation of the

Proposed Plan [Dkt. No. 480]. Following the conditional approval, Debtors filed the Proposed Plan [Dkt. No. 481].

8. On October 28, 2024, the Debtors filed the Plan Supplement [Dkt. No. 593]. The Plan Supplement included a Schedule of Assumed Executory Contracts and Unexpired Leases [Dkt. No 593, Ex. A]. This Schedule included the following contracts between agencies of the United States and certain Debtors: (1) a contract between the VA and Debtor Pheasant Ridge Facility Operations, LLC; and (2) a contract between the VA and Debtor Ashland Facility Operations, LLC (together, the "VA Contracts").

9. The Proposed Plan contemplates a transaction that results in the "transfer free and clear of all liens, claims and encumbrances (including overpayments) of the Debtors' Medicare Provider Agreements and Medicare provider number[,]" *see* Proposed Plan at 28, Article II, Section A.1.220, and a Confirmation Order permitting "the assumption and/or transfer, free and clear of all liens, claims and encumbrances (including any applicable overpayments) of the applicable Debtor's Medicare provider agreement and Medicare provider number to the applicable Reorganized Debtor," *see id.* at 83, Article VI, Section O. The Proposed Plan also contemplates modification of federal contracts, including the VA Contracts, and their assumption by the Reorganized Debtors without the consent of the United States. *See id.* at 83-85, Article VII, Sections A and B.

ARGUMENT

10. The Proposed Plan cannot be confirmed because it: (1) violates applicable Medicare law by purporting to assume and/or transfer the Medicare Provider Agreements free and clear of liability; (2) violates Bankruptcy Code § 365 and non-bankruptcy law by purporting to assign to the Reorganized Debtors contracts with the United States, including the VA Contracts, without the

consent of the United States; (3) runs afoul of Bankruptcy Code § 1123 by impermissibly expanding its scope beyond claims belonging to the Debtors or the estates; (4) improperly releases third-parties; (5) fails to preserve the setoff and recoupment rights of the United States; and (6) and wrongly endows the Bankruptcy Court with exclusive jurisdiction over all matters arising out of these cases.

I. The Medicare Provider Agreements Cannot Be Assumed or Transferred Without All Associated Obligations.

11. A Medicare Provider Agreement, an instrument created by federal statute, defines the legal and commercial relationship between CMS and a health care provider and is required to receive payments under the Medicare program. *See* 42 U.S.C. §§ 1395cc, 1395f(a); *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 404 (1993); *Mount Sinai Hosp. of Greater Miami, Inc. v. Weinberger*, 517 F.2d 329, 334, 337, 341 (5th Cir. 1975), *cert. denied*, 425 U.S. 935 (1976) (noting Medicare Provider Agreements are necessary for provider to receive Medicare payments and holding government's common-law right of recoupment is preserved under Medicare law). The Medicare statute and regulations supply the Medicare Provider Agreement's terms. *See* 42 U.S.C. § 1395cc; *see also Mem'l Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983); *United States v. Vernon Home Health Care Agency, Inc.*, 21 F.3d 693, 695-96 (5th Cir. 1994); *In re Monsour Med. Ctr.*, 11 B.R. 1014, 1018 (W.D. Pa. 1981); *In re St. John's Home Health Agency, Inc.*, 173 B.R. 238, 247 (Bankr. S.D. Fla. 1994).

12. A healthcare operator may assign its Medicare Provider Agreement to a new operator of the provider only in compliance with Medicare law's Change in Ownership ("CHOW") regulatory process. *See* 42 C.F.R. § 489.18. Medicare law provides that the Centers for Medicare & Medicaid Services ("CMS") may approve a CHOW. After CMS has determined that a valid CHOW has occurred, the Medicare Provider Agreement is automatically assigned to the new

provider. *See* 42 C.F.R. § 489.18; *Vernon Home Health*, 21 F.3d at 695. The automatic assignment subjects an assignee to all participation conditions of the Medicare program under the existing agreement. *Id.* Critically, these conditions include acceptance of liability for all previous overpayments and civil monetary penalties. *Id.* Essentially, an assignee of a Medicare Provider Agreement "merely step[s] into the shoes of the prior owner." *Eagle Healthcare, Inc. v. Sebelius*, 969 F. Supp. 2d 38, 40 (D.D.C. 2013) (citations omitted). No successor or assignee may use a provider's Medicare billing number or avail itself of the privileges of a Medicare Provider Agreement without an approved CHOW. *Id.* The transfer of a Medicare Provider Agreement entails a full "continuity of obligations." *Mission Hosp. Reg'l Med. Ctr. v. Burwell*, 819 F.3d 1112, 1116 (9th Cir. 2016).

13. Conversely, if the new operator rejects assignment, including all obligations thereunder, the Medicare Provider Agreement terminates by operation of law. *See* 42 C.F.R. § 489.13(c); CMS Publ. 100-08, Chapter 15 § 15.7.7.1.5.[2] Following termination, a new provider must file an initial application to participate in the Medicare program and can only receive payments for services provided to Medicare beneficiaries after the new provider has satisfied the requisite survey and certification requirements for new Medicare providers. *See* 42 C.F.R. § 489.13(c); CMS Publ. 100-08, Chapter 15 § 15.7.7.1.5 ("If the Buyer rejects assignment of the provider agreement, the Buyer must file an initial application to participate in the Medicare program."); *see Mission Hosp. Reg'l Med. Ctr.*, 819 F.3d at 1116 (recognizing that, where new owner of hospital refuses assignment, Medicare Provider Agreement is terminated, and hospital is considered new to Medicare program and must undergo certification and survey process). Thus,

[2] CMS Publ. 100-08, Chapter 15 § 15.7.7.1.5, is available at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/pim83c15.pdf.

any provision in the Proposed Plan allowing the Debtors to transfer Medicare Provider Agreements except in accordance with Medicare's statutory and regulatory requirements renders the Plan unconfirmable.

14. Contrary to the process described above, the Debtors' Proposed Plan purports to "transfer, free and clear of all liens, claims and encumbrances (including any applicable overpayments) [] the applicable Debtor's Medicare provider agreement and Medicare provider number to the applicable Reorganized Debtor." *See* Proposed Plan at 83, Article VI, Section O. No authority supports this free-and-clear "assumption and/or transfer" of a Medicare Provider Agreement. A free-and-clear "assumption and/or transfer" directly contravenes Medicare law and impermissibly places the Reorganized Debtors in a position better than any holder of a Medicare Provider Agreement outside of bankruptcy. *See Mission Product Holdings, Inc. v. Tempnology*, LLC, 587 U.S. 370, 381 (2019) (acknowledging "general bankruptcy rule" that "[t]he estate cannot possess anything more than the debtor itself did outside bankruptcy").

15. Furthermore, the Court cannot modify any obligations to or amounts owed CMS by the Debtors through a transfer of a Medicare Provider Agreement to the Reorganized Debtors. Bankruptcy Courts lack "jurisdiction over claims that 'arise' under [the Medicare Act].'" *In re Bayou Shores SNF, LLC*, 828 F.3d 1297, 1314 (11th Cir. 2016). In exercising its "statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions." *Law v. Siegel*, 571 U.S. 415, 421 (2014). And, in analyzing the Medicare statutes and regulations, "a bankruptcy court's inherent equitable powers cannot be used in a way that alters substantive rights defined under applicable nonbankruptcy law," and the Court's "[e]quitable powers should not be used to interfere with this Congressional policy choice." *In re Slater Health Ctr., Inc.*, 398 F.3d 98, 104-05 (1st Cir. 2005) (referring to the payment adjustment system established by Medicare

statutes); *see also United States v. Consumer Health Servs. of Am., Inc.*, 108 F.3d 390, 394-95 (D.C. Cir. 1997) (holding that 42 U.S.C. § 1395g(a), the payment provision of the Medicare statute, which directs that overpayments shall be taken into account, defines the Medicare program's substantive liability for payment to a provider).

16. Because the proposed treatment of the assumption, transfer and/or assignment of Medicare Provider Agreements under the Proposed Plan (1) violates the Medicare statute and regulations and (2) exceeds the jurisdiction of the Bankruptcy Court, the Court should deny confirmation of the Proposed Plan.

II. The Proposed Plan is unconfirmable because it permits assumption and assignment of contracts with the United States without its consent.

17. The United States objects to the assumption and assignment of any of its contracts, leases, and agreements, including the VA Contracts, to the extent the Debtors fail to obtain the consent of the United States and to comply with all applicable non-bankruptcy law. Article VII of the Proposed Plan generally provides that all executory contracts and leases not expired or previously rejected shall be assumed. *See* Proposed Plan at 83-84, Article VII, Section A. Per the Proposed Plan, entry of the Confirmation Order constitutes approval of the assumptions and rejections provided for in the Proposed Plan pursuant to section 365(a). *Id.* The Proposed Plan modifies all executory contracts and unexpired lease provisions to render unenforceable any contract provision that prohibits, restricts, or conditions the assumption and assignment of the contracts and leases. *Id.*

18. The Debtors cannot assume and assign contracts with the United States without its consent. Under 11 U.S.C. § 365(c)(1)(A), a debtor "may not assume or assign any executory contract or unexpired lease of the debtor . . . if applicable law excuses such a party, other than the debtor, to such a contract or lease from accepting performance from or rendering performance to

an entity other than the debtor or the debtor in possession." *See In re James Cable Partners, L.P.*, 27 F.3d 534, 537 (11th Cir. 1994); *In re Taylor Inv. Partners II, LLC*, 533 B.R. 837, 842-43 (Bankr. N.D. Ga. 2015).

19. The Anti-Assignment Act, 41 U.S.C. § 6305(a), is applicable law that excuses the United States from accepting performance from another. *See, e.g.*, *In re West Electronic Inc.,* 852 F.2d 79, 83 (3d Cir. 1988); *Cf. In re Braniff Airways, Inc.*, 700 F.2d 935, 943 (5th Cir. 1983). Specifically, the Anti-Assignment Act provides that "[t]he party to whom the Federal Government gives a contract or order may not transfer the contract or order, or any interested in the contract or order, to another party." 41 U.S.C. § 6305. Any such purported transfer "annuls the contract." *Id*. Preserving the government's ability to determine with whom to contract is imperative. The United States does not consent to the assumption, or the assumption and assignment, of any federal contract, lease, or other agreement, including the VA Contracts.

III. The Proposed Plan impermissibly broadens the scope of 11 U.S.C. § 1123(b)(3)(A).

20. The United States objects to the Proposed Plan to the extent it expands the settlements or compromises allowed under Bankruptcy Code § 1123. Article VII states that the Proposed Plan "shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, discharged, or otherwise resolved pursuant to the Plan." Proposed Plan at 73, Article VI, Section A. It further provides that entry of the Confirmation Order shall constitute the Bankruptcy Court's approval thereof under Bankruptcy Code section 1123 and Bankruptcy Rule 9019. *Id.; see also id.* at 94-97, Article X,

Sections A, D (providing debtor and third-party releases "pursuant to section 1123(b) of the Bankruptcy Code").

21. Section 1123(b)(3)(A) of the Bankruptcy Code provides for the settlement or adjustment of any claim belonging to the Debtors or to the estates. The Proposed Plan provides for the compromise and settlement of all claims or controversies resolved through the Proposed Plan. Whether the Debtors are settling their own claims or are attempting to compromise the unknown claims of unknown creditors without providing adequate notice is unclear. To the extent that the Proposed Plan purports to settle the United States' claims against the estate, it cannot. The Bankruptcy Code does not provide the Debtors any basis for including such "catch-all" settlement provisions in the Proposed Plan. The claims and interests of creditors are governed by the distribution scheme in the Bankruptcy Code and the Debtors should only receive the relief to which they are entitled under the Bankruptcy Code. By virtue of the Proposed Plan process, the United States does not waive sovereign immunity and does not consent to the compromise or settlement of its claims through confirmation of the Proposed Plan.

IV. The Debtors have not satisfied the requirements for third-party releases.

22. The United States opts out of and objects to the third-party limitation of liability, discharge, injunction, and release provisions set forth in Article X and elsewhere in the Proposed Plan. *See, e.g.*, Proposed Plan at 96-99, Article X, Sections D, E, F; *see also* Proposed Plan at 56-59, Article III, Section E. The releases are expansive and the Released Parties untold.

23. The Proposed Plan purports to release the "Released Parties" from "any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise," including, for example, those arising from the business or contractual

arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, any intercompany transactions, the ABL Credit Agreement, the Omega Term Loan Credit Agreement, the Omega Master Lease, the Omega Note Agreement, the ABL Exit Facility, and the ABL Exit Facility Credit Agreement. *See* Proposed Plan at 96-97, Article X, Sections D.2.

24. The Proposed Plan defines the "Released Parties" as (a) the Debtors and the Reorganized Debtors, (b) the UCC and each of its members, (c) Omega, (d) the ABL Secured Parties, (e) OHI Dip Lender, LLC, (f) TIX 33433 LLC, (g) the CRO, (h) the Independent Manager, and (i) with respect to each of these Entities, the Entity's current and former affiliates, subsidiaries, officers, directors, managers, principals, members, equity investors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professions. Proposed Plan at 30, Article II, Section A.1.243.

25. To the extent the Proposed Plan's non-debtor releases are nonconsensual, *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071, 2088 (2024), bars the releases. To the extent the Proposed Plan's non-debtor releases are considered consensual, *Purdue* does not address whether they are allowed, *id.*, but courts generally agree that an affirmative vote to accept a plan that includes a non-debtor release constitutes consent to the release. *See In re Stein Mart, Inc.*, 629 B.R. 516, 523 (Bankr. M.D. Fla. 2021). The Proposed Plan, however, extends consent to silence or inaction, which "raises a more difficult question." *Id.* For the court to infer consent from nonresponsive creditors and equity holders, the Debtors must make a showing under contract principles that the court may construe silence as acceptance. *See, e.g.*, *In re SunEdison, Inc.*, 576 B.R. 453, 458 (Bankr. S.D.N.Y. 2017). "Ordinarily, mere silence is not sufficient to establish a

waiver unless there is an obligation to speak." *Jordan v. Flynt*, 240 Ga. 359, 366, 240 S.E.2d 858, 863 (1977). Here, setting aside the question of whether Debtors have established that the releases are appropriate against all creditors generally (and it has not), the Debtors make no adequate showing that justifies the release of non-debtors, known and unknown, in these cases with respect to their potential liability to the United States.

V. The Proposed Plan fails to preserve the setoff and recoupment rights of the United States.

26. The United States objects to the Proposed Plan to the extent the Proposed Plan fails to preserve the United States' setoff and recoupment rights. Under the Proposed Plan, the Debtors and Reorganized Debtors retain rights to assert setoff and recoupment. *See* Proposed Plan at 16, Article II, Section A.1.47; *id.* at 72, Article V, Section D; *id.* at 89-90, Article VIII, Section I. Yet, the Proposed Plan improperly enjoins all Entities "who have held, hold, or may hold claims or interest that have been released, discharged, or are subject to exculpation" from asserting these same setoff and recoupment rights. *See id.* at 98, Article X, Section F.

27. Like other creditors, the United States has the common law right to setoff mutual debts. "The government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.'" *United States v. Munsey Trust Co. of Washington, D.C.*, 332 U.S. 234, 239 (1947) (quoting *Gratiot v. United States*, 40 U.S. 336, 370 (1841)); *see also Amoco Prod. Co. v. Fry*, 118 F.3d 812, 817 (D.C. Cir. 1997). This right – "which is inherent in the federal government – is broad and 'exists independent of any statutory grant of authority to the executive branch.'" *Marre v. United States*, 117 F.3d 297, 302 (5th Cir. 1997) (quoting *United States v. Tafoya*, 803 F.2d 140, 141 (5th Cir. 1986)). Hence, the United States can setoff mutual prepetition debts and claims as well as post-petition debts and claims. *See Zions First Nat'l Bank, N.A. v. Christiansen Bros*. (*In re Davidson*

Lumber Sales, Inc.), 66 F.3d 1560, 1569 (10th Cir. 1995); *Palm Beach County Bd. of Pub. Instruction (In re Alfar Dairy, Inc.)*, 458 F.2d 1258, 1262 (5th Cir. 1972), *cert. denied*, 409 U.S. 1048 (1972); *Mohawk Indus., Inc. v. United States (In re Mohawk Indus., Inc.)*, 82 B.R. 174, 178-79 (Bankr. D. Mass. 1987).

28. The Proposed Plan impermissibly modifies these rights. Such modification is impermissible because Section 553 of the Bankruptcy Code preserves the right of setoff in bankruptcy as it exists outside bankruptcy, *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 18 (1995), neither expanding nor constricting it, *United States v. Maxwell*, 157 F.3d 1099, 1102 (7th Cir. 1998). "[T]he government of the United States suffers no special handicap under § 553 of the Bankruptcy Code," *id*. at 1103, that alters this principle.

29. Moreover, because "[s]etoff occupie[s] a favored position in our history of jurisprudence," *Bohack Corp. v. Borden, Inc.*, 599 F.2d 1160, 1164 (2d Cir. 1979), courts do not interfere with its exercise absent "the most compelling circumstances." *Niagara Mohawk Power Corp. v. Utica Floor Maintenance, Inc. (In re Utica Floor Maintenance, Inc.*), 41 B.R. 941, 944 (N.D.N.Y. 1984); *see also New Jersey Nat'l Bank v. Gutterman (In re Applied Logic Corp.)*, 576 F.2d 952, 957 (2d Cir. 1978) ("The rule allowing setoff . . . is not one that courts are free to ignore when they think application would be 'unjust.'").

30. Compelling circumstances generally entail criminal conduct or fraud by the creditor. *See In re Whimsy, Inc.*, 221 B.R. 69, 74 (S.D.N.Y. 1998). No such compelling circumstances are present here, and accordingly, the Proposed Plan must provide for and preserve

the federal government's setoff rights. Failure to do so is not only an impairment of the government's rights but it violates Bankruptcy Code § 1129(a)(1).

31. Similarly, the Proposed Plan improperly fails to preserve recoupment rights of the United States. Recoupment is unaffected by discharge. *See In re Patterson*, 580 B.R. 283, 290 (Bankr. N.D. Ga. 2017); *Megafoods Stores, Inc. v. Flagstaff Realty Assocs. (In re Flagstaff Realty Assocs.)*, 60 F.3d 1031, 1035-36 (3rd Cir. 1995) (holding that recoupment survives discharge following confirmation and implementation of chapter 11 plan even if creditor did not object to plan or seek a stay pending appeal); *see also Beaumont v. Dep't of Veteran Affairs (In re Beaumont)*, 586 F.3d 776, 781 (10th Cir. 2009); *Saif Corp. v. Harmon (In re Harmon)*, 188 B.R. 421, 425 (B.A.P. 9th Cir. 1995) ("Because recoupment only reduces a debt as opposed to constituting an independent basis for a debt, it is not a claim in bankruptcy, and is therefore unaffected by the debtor's discharge."); *Lunt v. Peoples Bank (In re Lunt)*, 500 B.R. 9, 16 (D. Kan. 2013); *Mercy Hosp. of Watertown v. New York*, 171 B.R. 490, 495 (N.D.N.Y. 1994); *Brown v. General Motors Corp*., 152 B.R. 935, 938 (W.D. Wis. 1993) (holding right of recoupment not a claim or debt to be discharged in bankruptcy). For the same reasons as stated above with respect to setoff rights, the Proposed Plan provision enjoining creditors' recoupment rights is impermissible.

VI. The Proposed Plan improperly provides for the Bankruptcy Court to retain exclusive jurisdiction over all matters arising out of the cases.

32. The United States objects to the Proposed Plan to the extent it purports to endow the Bankruptcy Court exclusive jurisdiction over all matters arising out of these cases. *See* Proposed Plan at 99-101, Article XI, Section A; *see also* 28 U.S.C. § 1334. While "the Bankruptcy Court plainly [may retain] jurisdiction to interpret and enforce its own prior orders," *Travelers*

Indem. Co. v. Bailey, 557 U.S. 137, 151 (2009), it may not divest other courts of their concurrent jurisdiction to interpret bankruptcy court orders.

33. The bankruptcy court, as a unit of the district court, has "original but not exclusive jurisdiction." 28 U.S.C. § 1334(b); *see In re Smith*, Case No. 07-06043 (JEM), 2008 WL 7874258, at *2 (Bankr. N.D. Ga. Aug. 18, 2008) [Docket No. 46] (noting bankruptcy court's jurisdiction is derivative of the district court's jurisdiction); *see also Stern v. Marshall*, 564 U.S. 462, 499 (2011); *In re Mystic Tank Lines Corp.*, 544 F.3d 524, 528-29 (3d Cir. 2008) ("No provision of the Bankruptcy Code requires the Bankruptcy Court to hear all 'related to' claims. . . . [T]he only aspect of the bankruptcy proceeding over which the district courts and their bankruptcy units have exclusive jurisdiction is 'the bankruptcy petition itself.'") (citing *In re Wood*, 825 F.2d 90, 92 (5th Cir.1987)); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 224-25 (3d Cir. 2004), as amended (Feb. 23, 2005) ("Section 105(a) permits a bankruptcy court to 'issue any order, process or judgment that is necessary or appropriate to carry out the provisions' of the Bankruptcy Code. But as the statute makes clear, § 105 does not provide an independent source of federal subject matter jurisdiction."); *In re Skyline Woods Country Club*, 636 F.3d 467, 471 (8th Cir. 2011); *Whitehouse v. LaRoche*, 277 F.3d 568, 576 (1st Cir. 2002).

34. The Debtors seek to have the Bankruptcy Court assert exclusive jurisdiction broadly over "all matters arising out of the Chapter 11 Cases and the Second Amended Combined Disclosure Statement and Plan," including, but not limited to, (a) to take any action "as may be necessary and appropriate to restrain interference with" or implementation of the Proposed Plan, (b) to issue orders as may be necessary for, and resolve disputes arising under or related to, the implementation, execution, performance, and consummation of the plan and all matters referred to in the Proposed Plan, (c) to remedy any defect, cure any omission, or reconcile any inconsistency

in the Proposed Plan or Confirmation Order so as to carry out their intent and purposes, (d) to issues such orders in aid of consummation of the Proposed Plan and Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, and (e) to determine any matters that may arise in connection with or related to the Proposed Plan, Confirmation Order, or any contract, release, or other agreement or document created or implemented in connection with the Proposed Plan." Proposed Plan at 99-101, Article XI, Section A. The United States objects to this improperly expansive provision of exclusion jurisdiction.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny confirmation of any Proposed Plan that provides for the assumption and/or assignment or transfer of the Medicare Provider Agreements except in accordance with all applicable Medicare and other federal law. The United States also requests that the Court deny confirmation of any Proposed Plan that does not comply with applicable provisions of the Bankruptcy. The United States provided the Debtors with language that resolves the outlined deficiencies for inclusion in the Confirmation Order, but as of this filing Debtors have not agreed to include that language.

Dated: November 6, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November 2024 I caused a copy of the foregoing document to be served by electronic mail on all parties on the Court's ECF system.

/s/ Louisa A. Soulard
Louisa A. Soulard