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

In re	)	Chapter 11
LAVIE CARE CENTERS, LLC, *et al.*[1]	)	Case No. 24-55507-PMB
Debtors.	)	(Jointly Administered)
	)	**Re: D.I. 821**

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO MOTION TO ALLOW LATE FILED CLAIM

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (the "Debtors"), by and through its undersigned counsel, hereby objects (this "Objection") to the *Motion to Allow Late Filed Claim* [D.I. 821] (the "Motion")[2] filed by Kelly Feeko, individually and as executrix of the estate of Richard J. Reilly ("Movant"). In further support of this Objection, the Committee represents as follows:

BACKGROUND

1. On June 2, 2024, and June 3, 2024 (the "Petition Date"), the Debtors commenced these cases ("Chapter 11 Cases") by filing with the Court petitions for relief under chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered for procedural

[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.kccllc.net/LaVie. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

[2] Capitalized terms not defined herein are defined in the Motion or the Plan, as applicable.

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purposes only. The Debtors continue to operate their business and manage their property as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

A. The Bar Date

2. On July 1, 2024, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Establishing Bar Dates for Filing Claims Against the Debtors; and (II) Granting Related Relief* [D.I. 216] (the "Bar Date Motion"). Thereafter, the Court entered an order [D.I. 218] (the "Bar Date Order") granting the Bar Date Motion. Pursuant to the Bar Date Order, the deadline for creditors and parties in interest, excluding governmental units, to file a proof of claim against any of the Debtors was August 30, 2024, at 5:00 p.m. (ET) (the "Bar Date").

3. The Bar Date Order also required the Debtors to (i) serve the Bar Date Order and proof of claim form to creditors and (ii) publish notice of the Bar Date in either *The Wall Street Journal*, *The New York Times*, or *USA Today*.

4. In accordance with the Bar Date Order, the Debtors published a notice of Bar Date in *The New York Times* on July 8, 2024. *See* D.I. 241. The Debtors further published notice of the Bar Date in *The Miami Herald*, *The Orlando Sentinel*, and *The Florida Times-Union* on July 11, 2024. *See* D.I. 261.

5. On September 16, 2024, Debtor Pavilion at St. Luke Village Facility Operations, LLC, d/b/a The Pavilion at St. Luke Village ("Pavilion") filed its *Notice of Suggestion on Pendency of Bankruptcy for LaVie Care Centers, LLC, et al. (Including The Pavilion at St. Luke Village Facility Operations, LLC, t/d/b/a The Pavilion at St. Luke Village) and Automatic Stay of Proceedings* (the "Suggestion of Bankruptcy") in Movant's state court lawsuit against Pavilion. Accordingly, Movant had actual notice of Pavilion's bankruptcy no later than September 16, 2024.

B. The Debtors' Plan and the Motion

6. On September 26, 2021, the Debtors filed their *Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [D.I. 461] (as applicable, and as may have been amended or supplemented from time to time, the "Plan"). The Plan embodied a settlement among the Debtors, the Committee, and Plan Sponsor that had been heavily negotiated over the course of several months, including several days of mediation. Pursuant to that settlement, the Debtors and Plan Sponsor agreed to contribute $12.75 million, as well as certain other assets, to the GUC Trust, to be used solely for the benefit of unsecured creditors.

7. On December 5, 2024, the Court entered its *Findings of Fact, Conclusions of Law, and Order Approving on Final Basis and Confirming Debtors' Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 735] (the "Confirmation Order"), confirming the Plan. The Debtors are currently preparing for their confirmed Plan to go Effective.

8. On January 28, 2025—almost two months following entry of the Confirmation Order and over four months after Movant had actual notice of the bankruptcy—Movant filed the Motion seeking authorization to file a late claim against Debtor Pavilion.

ARGUMENT

9. The Motion should be denied as Movant has failed to satisfy the standard necessary to file a late proof of claim. In chapter 11 cases under the Bankruptcy Code, filing a late proof of claim is governed by Bankruptcy Rule 9006(b)(1), which provides as follows:

> [W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion ... on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bank. P. 9006(b)(1). By its plain terms, the Bankruptcy Rules require a party to show "excusable neglect" to file a late proof of claim. *Id.* Courts have interpreted "excusable neglect" as requiring a movant to show that the "failure to timely perform was due to circumstances which were beyond the reasonable control of the person whose duty it was to perform." *In re South Atlantic Fin. Corp.*, 767 F.2d 814, 817 (11th Cir. 1985). Courts often consider the following factors in determining whether there was excusable neglect: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer Inv. Services Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 395 (1993).

10. Critically, the Motion is devoid of any discussion of the *Pioneer* factors.[3] However, the Committee believes that application of the *Pioneer* requires the Court to deny the Motion.

11. First, granting the Motion would significantly prejudice the Debtors, the GUC Trust, and their constituents. The Plan was confirmed on December 5, 2024, after months of negotiations and multiple days of mediation. The deal that was reached by the Debtors, Plan Sponsor and Committee, which resulted in a $12.75 million cash contribution to the GUC Trust, was premised on the level of projected claims against the Debtors. Had Movant filed a claim promptly after receiving actual notice of the bankruptcy, the parties would have been able to take that claim into account in negotiating the settlement. Only after the Plan had already been confirmed and the cash contribution to the GUC Trust been determined was the Motion filed.

[3] Movant improperly relies on 11 U.S.C. § 726 to argue that the Court should permit her late filed claim. *See* Motion ¶ 15. However, section 726 of the Bankruptcy Code does not apply in chapter 11 cases. *See* 11 U.S.C. § 103(b) (noting that subchapters I and II of chapter 7, including section 726, apply only in a chapter 7 case); *see also In re Tribune Company*, 506 B.R. 613, 617 (Bankr. D. Del. 2013) (acknowledging that section 726 does not permit a late filing in a chapter 11 case, because section 726 does not apply in a chapter 11 case).

Through the Motion, Movant seeks authority to file a claim against Debtor Pavilion in an unknown amount or priority, not limited to available insurance coverage. Accordingly, Movant's claim, if allowed, could significantly reduce the anticipated recoveries to creditors under the hard-fought settlement embodied in the Plan.

12. In addition, permitting Movant to file a late, unliquidated claim imposes a burden on the Debtors' estate to review and liquidate such claim, which may require time-consuming and cost-intensive litigation. The potential litigation costs and associated attorneys' fees to engage and complete this process further harms and prejudices the Debtors, their estates, and other unsecured creditors. *In re Keene Corp.*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 2019) (finding that the legal fees required to litigate late claims supports a finding of prejudice).

13. Second, Movant's more than four-month delay in filing the Motion precludes a finding of excusable neglect. Notably, Movant's basis for filing the Motion was that "Movant did not have notice of the bankruptcy prior to the Bar Date." Motion ¶ 16. The Committee disputes this assertion.

14. Movant's lawsuit against Pavilion—which, it should be noted, contravened the automatic stay[4]—was not filed until after notice of the Bar Date was served. Accordingly, Movant was an unknown creditor at that time. For unknown creditors, constructive notice of a bar date satisfies due process. *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 317 (1950) (finding that constructive notice to unknown creditors may be satisfied via publication notice); *In re SVB Fin. Grp.*, 660 B.R. 60, 82 (Bankr. S.D.N.Y. 2024); *see also Matter of GAC Corp.*, 681 F.2d 1295, 1300 (11th Cir. 1982) (acknowledging publication notice as sufficient notice reasonably calculated

[4] The Committee reserves all rights with respect to Movant's violation of the automatic stay, including the right to investigate whether Movant had actual or constructive notice of the bankruptcy prior to filing the lawsuit.

to apprise certain parties of the necessity to file a proof of claim and noting such publication notice complied with due process). Here, Movant had constructive notice of the Bar Date when the Debtors published notice of it in *The New York Times* in July 2024 in accordance with the Bar Date Order.

15. However, even if Movant did not have constructive notice of the Bar Date, Movant indisputably had *actual* notice of the bankruptcy no later than September 16, 2024, yet inexplicably chose to sit on her rights for over four months. In those intervening four months between the filing of the Suggestion of Bankruptcy in Movant's proceeding and the Motion, not only did the Debtors and the Committee extensively negotiate and formulate the Debtors' Plan that secures a meaningful recovery for unsecured creditors, but the Court also confirmed said Plan. Movant's untimely request now threatens the meaningful recoveries provided under the Plan and distracts the Debtors at a time when they are preparing to go effective.

16. Third, Movant failed to identify any reason for her more than four-month delay nor any basis for the Court to find that the delay was not within Movant's reasonable control. It is one thing for a creditor to miss a bar date, but to file a claim expeditiously upon learning of the bankruptcy. It is something else altogether to have actual knowledge of a bankruptcy and wait more than four months to take any action before the Court. This weighs heavily against a finding of excusable neglect. *E.g.*, *In re Robinson Foundry, Inc.*, 347 B.R. 781 (Bankr. M.D. Ala. 2006) (rejecting a creditor's request to file a late claim and noting "[t]he fact that Creditor knew about the bankruptcy filing and did nothing for almost four months is dispositive"); *In re AMR Corp.*, 492 B.R. 660, 667 (Bankr. S.D.N.Y. 2013) (holding that a request to file a late claim filed more than three months after the bar date had passed was "significant" and weighed against excusable neglect). Movant had an obligation to act promptly in filing the Motion as she had notice of these

Chapter 11 Cases. *In re Queen Elizabeth Realty Corp.*, 586 B.R. 95, 109 (S.D.N.Y. 2018) ("[A] creditor with actual knowledge of a bankruptcy proceeding—even if the creditor did not receive the notice it was due—may not sit on its rights indefinitely.").

17. Finally, the last *Pioneer* factor (*i.e.*, good faith) is neutral, as the Committee cannot determine Movant's good faith on the facts currently available. Even if this factor supported a finding of excusable neglect, presence of good faith is rarely dispositive and should not be dispositive here. *E.g.*, *SVB Fin.*, 660 B.R. at 98 (citation omitted).

18. For the foregoing reasons, the *Pioneer* factors weigh against finding excusable neglect. Consequently, the Motion should be denied.

CONCLUSION

For the foregoing reasons, the Committee requests that the Court sustain this Objection and deny the Motion.

[Signature Page Follows]

Dated: March 4, 2025

TROUTMAN PEPPER LOCKE LLP

/s/ Pierce E. Rigney

Pierce E. Rigney (GA ID No. 656946)
600 Peachtree Street, NE, Suite 3000
Atlanta, GA 30308
Telephone: 404.885.3901
Email: pierce.rigney@troutman.com

-and-

Francis J. Lawall (admitted *pro hac vice*)
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
Telephone: 215.981.4481
Email: francis.lawall@troutman.com

-and-

Mathew R. Brooks (GA ID #378018)
Deborah Kovsky-Apap (admitted *pro hac vice*)
875 Third Avenue
New York, NY 10022
Telephone: 212.704.6000
Email: matthew.brooks@troutman.com
deborah.kovsky@troutman.com

Counsel for the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2025, all ECF participants registered in this case were served electronically with the foregoing through the Court's ECF system at their respective email addresses registered with the Court.

I further certify that on March 4, 2025, I caused a true and correct copy of the Motion to be served by first class mail to the entities on the service list attached here to as **Exhibit I**.

/s/ Pierce E. Rigney

Pierce E. Rigney (GA ID No. 656946)
Troutman Pepper Locke LLP
600 Peachtree Street, NE, Suite 3000
Atlanta, GA 30308
Telephone: (404) 885-3901
Email: pierce.rigney@troutman.com

Counsel to the Official Committee of Unsecured Creditors

Exhibit I

Limited Service List

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Phone	Fax	Email
Counsel to American Federation of State, County & Municipal Employees, AFL-CIO (AFSCME)	American Federation of State, County & Municipal Employees, AFL-CIO	Matthew Stark Blumin, Office of General Counsel	1101 17th Street NW, Suite 900			Washington	DC	20036			MBlumin@afscme.org
Creditors Committee Member / Top 30 Creditor	Amidon Nurse Staffing, LLC	Eli Schick	1732 Kingsley Avenue, Suite 1			Orange Park	FL	32073	352-877-4444		eschick@amidonns.com
Creditors Committee Member / Top 30 Creditor	Amidon Nurse Staffing, LLC		PO Box 436			Malverne	NY	11565	904-374-5904		eschick@amidonns.com
Counsel for Claimants, Interested Parties, and Healthcare Negligence Settlement Recovery Corp.	Anthony and Partners, LLC	John Anthony	100 S. Ashley Drive, Suite 1600			Tampa	FL	33602	813-273-5616	813-221-4113	janthony@anthonyandpartners.com; cfosdick@anthonyandpartners.com; eservice@anthonyandpartners.com; euzonwanne@anthonyandpartners.com
Counsel to Jacksonville Nursing Home, Ltd.	Baker Donelson Bearman Caldwell & Berkowitz, PC	Kathleen G Furr	3414 Peachtree Road, N.E., Suite 1500	Monarch Plaza		Atlanta	GA	30326	404-577-6000	404-221-6533	Kfurr@BakerDonelson.com
Counsel to Floridean SNF Operations, LLC, Baya Pointe SNF Operations, LLC, and Osprey SNF Operations, LLC	Berman Fink Van Horn, P.C.	Lydia M. Hilton, William J. Piercy	3475 Piedmont Road, NE	Suite 1640		Atlanta	GA	30305	404-261-7711	404-233-1943	lhilton@bfvlaw.com; wpiercy@bfvlaw.com; bpiercy@bfvlaw.com
Counsel to Empirian Health, LLC	Burr & Forman LLP	Derek F Meek	420 North 20th Street, Suite 3400			Birmingham	AL	35203	205-251-3000	205-458-5100	dmeek@burr.com
Counsel to Healthcare Services Group, Inc.	Burr & Forman LLP	Graham H Stieglitz	1075 Peachtree Street, N.E., Suite 3000			Atlanta	GA	30309	404-815-3000	404-817-3244	gstieglitz@burr.com
Creditors Committee Member	CDB Services USA, LLC	Sidney Robert Bradley	3707 W. Jetton Avenue			Tampa	FL	33629	813-769-9127		Sidney.Bradley@wecarestaffservices.com
Centers for Medicare & Medicaid Services	Centers for Medicare & Medicaid Services		7500 Security Blvd			Baltimore	MD	21244			
Counsel to Office Business Solutions, LLC	Chinnery Evans & Nail, P.C.	Elizabeth S. Lynch	800 NE Vanderbilt Lane			Lee's Summit	MO	64064	816-525-2050	816-525-1917	blynch@chinnery.com
Counsel to the Duval County Tax Collector	City of Jacksonville	Laura Boeckman, Assistant General Counsel	117 West Duval Street, Suite 480			Jacksonville	FL	32202			lboeckman@coj.net
Co-counsel to Davies Claims Solutions, LLC	Cohen Pollock Merlin Turner, P.C.	Bruce Z. Walker	3350 Riverwood Parkway, Suite 1600			Atlanta	GA	30339	770-858-1288	770-858-1277	bwalker@cpmtlaw.com
Counsel to Lawrenceville SNF Operations LLC, Fork Union SNF Operations LLC, Westover Hills SNF Operations LLC, Williamsburg SNF Operations LLC, Staunton SNF Operations LLC, Winchester SNF Operations LLC, Chelsea Operator LLC, Belmont Bay Operator, LLC, Southampton Operator, LLC, and Alexandria Operator, LLC	Copeland, Stair, Valz & Lovell LLP	Mark D. Lefkow, D. Gary Lovell, Jr.	P.O. Box 56887			Atlanta	GA	30343-0887	404-221-2325; 843-266-8213	404-523-2345	mlefkow@csvl.law; glovell@csvl.law
Creditors Committee Member	Corrado Burdieri, as Personal Representative For the Estate of Theresa Mary Burdieri	c/o Jon M. Herskowitz, Esq.	Baron & Herskowitz	9100 S. Dadeland Blvd., Suite 1704		Miami	FL	33156	305-670-0101		jon@bhfloridalaw.com; janthony@anthonyandpartners.com
Counsel to the Debtors' Proposed DIP Lenders (TIX 33433 LLC)	DLA Piper LLP (US)	Attn James Muenker	1900 N Pearl St, Suite 2200			Dallas	TX	75201	214-743-4559	214-743-4545	james.muenker@dlapiper.com
Counsel to the Debtors' Proposed DIP Lenders (TIX 33433 LLC)	DLA Piper LLP (US)	Attn Kira Mineroff	1251 Avenue of the Americas			New York	NY	10020	212-335-4932		kira.mineroff@dlapiper.com
Counsel to the Debtors' Proposed DIP Lenders (TIX 33433 LLC)	DLA Piper LLP (US)	Joseph A. Roselius	444 W. Lake St., Suite 900			Chicago	IL	60606-0089	312-368-7034		joseph.roselius@us.dlapiper.com
Counsel to the Debtors' Proposed DIP Lenders (TIX 33433 LLC)	DLA Piper LLP (US)	Emily Marshall	1201 West Peachtree Street NW			Atlanta	GA	30309	404-736-7800	404-682-7800	emily.marshall@us.dlapiper.com
Counsel to the Chubb Companies	Duane Morris LLP	Nicolette J. Zulli, Christopher D. Kanne	1075 Peachtree Street NE, Suite 1700			Atlanta	GA	30309-3929	404-253-6900	404-253-6901	njzulli@duanemorris.com; cdkanne@duanemorris.com
Counsel to the Chubb Companies	Duane Morris LLP	Wendy M. Simkulak, Jessica Kenney Bonteque	30 South 17th Street			Philadelphia	PA	19103-4196	215-979-1000	215-979-1020	wmsimkulak@duanemorris.com; jbonteque@duanemorris.com
Counsel to Elderberry Nursing Home Landlords	Elderberry	Attn C. Lynch Christian, III	1000 Church Street, Third Floor			Lynchburg	VA	24504		434-846-8416	clchristian@1000churchstreet.com
Counsel to the Prepetition Omega Secured Parties, Omega Landlords, and Proposed DIP Lenders (OHI DIP Lender, LLC & OHI Mezz Lender, LLC)	Ferguson Braswell Fraser Kubasta PC	Attn Leighton Aiken	2500 Dallas Parkway, Suite 600			Plano	TX	75093	469-440-5405; 972-378-9111		laiken@fbfk.law
State Attorney General	Florida Attorney General	Attn Bankruptcy Department	PL-01 The Capitol			Tallahassee	FL	32399-1050	850-414-3300	850-487-2564	citizenservices@myfloridalegal.com; oag.civil.eserve@myfloridalegal.com
State Attorney General	Georgia Attorney General	Attorney General Chris Carr	40 Capitol Square, SW			Atlanta	GA	30334	404-458-3600	404-657-8733	Agcarr@law.ga.gov
Georgia Department of Revenue	Georgia Department of Revenue	Attn Bankruptcy Dept	State Revenue Commissioner	1800 Century Blvd NE, Suite 15300		Atlanta	GA	30345			
Counsel to Welltower NNN Group, LLC	Gibson, Dunn & Crutcher LLP	Jeffrey C. Krause, Michael G. Farag	333 South Grand Avenue			Los Angeles	CA	90071	213-229-7995		jkrause@gibsondunn.com; mfarag@gibsondunn.com

Limited Service List

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Phone	Fax	Email
Counsel to the Prepetition Omega Secured Parties, Omega Landlords, and Proposed DIP Lenders (OHI DIP Lender, LLC & OHI Mezz Lender, LLC)	Goodwin Proctor LLP	Attn Robert J Lemons, Liza L. Burton	The New York Times Building	620 Eighth Avenue		New York	NY	10018	212-813-8925; 212-813-8971		RLemons@goodwinlaw.com; lburton@goodwinlaw.com
Counsel to Harts Harbor Health Landlords	Harts Harbor	Baker Donelson Bearman Caldwell & Berkowitz, PC	Attn Sandra Adams	200 East Broward Blvd, Suite 2000		Fort Lauderdale	FL	33301			sadams@bakerdonelson.com
Counsel to New Port Richey Opco, LLC, Pensacola Opco, LLC, Brandon Health Opco, LLC, Port Charlotte OpCo, LLC, Bayonet Opco, LLC, Sarasota Opco, LLC, Melbourne Opco LLC, Kissimmee Opco, LLC, West Altamonte Opco, LLC, and Franco SNF Operations LLC	Hawkins Parnell & Young, LLP	Carl H. Anderson, Jr.	303 Peachtree Street, NE, Suite 4000			Atlanta	GA	30308-3243	404-614-7400	855-889-4588	canderson@hpylaw.com
Creditors Committee Member / Top 30 Creditor	Healthcare Services Group	Patrick J Orr, Pete Nenstiel	3220 Tilman Drive, Suite No 300			Bensalem	PA	18201	215-688-4359		porr@hcsgcorp.com; pnenstiel@hcsgcorp.com
Internal Revenue Service	Internal Revenue Service	Centralized Insolvency Operation	2970 Market St			Philadelphia	PA	19104		855-235-6787	Mimi.M.Wong@irscounsel.treas.gov
Internal Revenue Service	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346	800-973-0424	855-235-6787	Mimi.M.Wong@irscounsel.treas.gov
Counsel to CAREmasters Homehealth LLC and CAREmasters Healthcare Services LLC	Jones & Walden LLC	Thomas T. McClendon	699 Piedmont Avenue, NE			Atlanta	GA	30308	404-564-9300		tmcclendon@joneswalden.com
Claims and Noticing Agent	KCC dba Verita	Sydney Reitzel	222 N Pacific Coast Highway, Ste 300			El Segundo	CA	90245	877-709-4750; 424-236-7230		LVCCinfo@kccllc.com
Counsel to Powerback Rehabilitation, LLC d/b/a Powerback Rehabilitation and Respiratory Health Services, LLC d/b/a Powerback Respiratory	Keck Legal, LLC	Benjamin R. Keck	2801 Buford Hwy NE, Suite 115			Atlanta	GA	30329	470-826-6020		bkeck@kecklegal.com
Counsel to LEAF Capital Funding, LLC	Kilpatrick Townsend & Stockton LLP	Paul M. Rosenblatt	1100 Peachtree St NE, Suite 2800			Atlanta	GA	30309	404-815 6321	404-541-3373	prosenblatt@ktslaw.com; ecfnotices@ktslaw.com
Counsel for Claimants and Interested Parties	Lamberth, Cifelli, Ellis & Nason, PA	G. Frank Nason, IV	6000 Lake Forrest Drive, NW Suite 435			Atlanta	GA	30328	404-262-7373; 404-495-4468		fnason@lcenlaw.com
Counsel for Kelly Feeko, Individually and as Executrix of the Estate of Richard J. Reilly, Deceased	Lamberth, Cifelli, Ellis & Nason, PA	G. Frank Nason, IV	6000 Lake Forrest Drive, NW Suite 435			Atlanta	GA	30328	404-262-7373; 404-495-4468		fnason@lcenlaw.com
Debtors	LaVie Care Centers LLC	M Benjamin Jones	c/o Ankura Consulting Group, LLC	485 Lexington Avenue, 10th Floor		New York	NY	10017			
Counsel for the Debtors and Debtors-in-Possession	McDermott Will & Emery, LLP	Daniel M Simon	1180 Peachtree Street NE, Suite 3350			Atlanta	GA	30309	404-260-8535	404-393-5260	dmsimon@mwe.com
Counsel for the Debtors and Debtors-in-Possession	McDermott Will & Emery, LLP	Emily C Keil	444 West Lake Street, Suite 4000			Chicago	IL	60606	312-372-2000	312-984-7700	ekeil@mwe.com
Counsel for the Debtors and Debtors-in-Possession	McDermott Will & Emery, LLP	Jake Jumbeck, Catherine Lee	444 West Lake Street, Suite 4000			Chicago	IL	60606	312-372-2000	312-984-7700	jjumbeck@mwe.com; clee@mwe.com
Counsel to Michigan Department of Treasury	Michigan Department of Treasury	Moe Freedman, Assistant Attorney General	3030 W. Grand Blvd. Ste. 10-200	Cadillac Place Building		Detroit	MI	48202	313-456-0140		FreedmanM1@michigan.gov
State Attorney General	Mississippi Attorney General	Attn Bankruptcy Department	Walter Sillers Building	550 High St Ste 1200		Jackson	MS	39201	601-359-3680		
Counsel to CREA Brandon-C LLC and Brandon Health OpCo, LLC	Nelson Mullins Riley & Scarborough, LLP	Shane G. Ramsey	1222 Demonbreun St., Suite 1700			Nashville	TN	37203	615-664-5355	615-664-5399	shane.ramsey@nelsonmullins.com
State Attorney General	North Carolina Attorney General	Attn Bankruptcy Department	9001 Mail Service Center			Raleigh	NC	27699-9001	919-716-6400	919-716-6750	ncago@ncdoj.gov
Office of the United States Trustee for the Northern District of Georgia	Office of the United States Trustee	Jonathan S. Adams, R. Jeneane Treace	362 Richard B Russell Bldg	75 Ted Turner Drive, SW		Atlanta	GA	30303	404-331-4437; 404-331-4438; 404-331-4076	404-730-3534	USTP.Region21@usdoj.gov; Jonathan.S.Adams@usdoj.gov; jeneane.treace@usdoj.gov
Creditors Committee Member / Top 30 Creditor	Omnicare Inc	Foley & Lardner, LLP	Geoff Goodman	321 North Clark Street, Suite 300		Chicago	IL	60654	312-832-4514		GGoodman@foley.com
Creditors Committee Member / Top 30 Creditor	Omnicare Inc	Greg Day	6825 W. Galveston Street, #3			Chandler	AZ	85226	928-848-9643		Gregory.Day@CVSHealth.com
Counsel to Carolina Rehabilitation & Surgical Associates, P.A.	Pamela P. Keenan		PO Box 19766			Raleigh	NC	27619-9766	919-848-0420	919-848-4216	pkeenan@kirschlaw.com
Counsel to the Debtors' Prepetition ABL Lender (MidCap Funding IV Trust)	Parker, Hudson, Rainer & Dobbs LLP	Bryan E. Bates	303 Peachtree Street NE, Suite 3600			Atlanta	GA	30308	404-420-4333	404-522-8409	bbates@phrd.com
State Attorney General	Pennsylvania Attorney General	Attn Bankruptcy Department	16th Floor, Strawberry Square			Harrisburg	PA	17120	717-787-3391	717-787-8242	info@attorneygeneral.gov
Counsel to CDB Services USA LLC d/b/a weCare Staffing Services	Pierson Ferdinand LLP	Susan V Warner	333 SE 2nd Avenue, Suite 2000			Miami	FL	33131	786-310-0637		susan.warner@pierferd.com

Limited Service List

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Phone	Fax	Email
Creditors Committee Member / Counsel to CDB Services USA LLC d/b/a weCare Staffing Services	Pierson Ferdinand LLP	Thomas R Walker	260 Peachtree Street NW, Suite 2200			Atlanta	GA	30303	404-566-6988		thomas.walker@pierferd.com
Counsel to Welltower NNN Group, LLC	Polsinelli, PC	David E Gordon, Caryn E Wang, Ashley D Champion	1201 West Peachtree, Street NW, Suite 1100			Atlanta	GA	30309	404-253-6005		dgordon@polsinelli.com; cewang@polsinelli.com; achampion@polsinelli.com
Counsel to the Debtors' Prepetition ABL Lender (MidCap Funding IV Trust)	Proskauer Rose LLP	Attn Charles A Dale	One International Place			Boston	MA	02110	617-526-9870		cdale@proskauer.com
Counsel to the Debtors' Prepetition ABL Lender (MidCap Funding IV Trust)	Proskauer Rose LLP	Dylan Marker	Eleven Times Square			New York	NY	10036-8299	212- 969-3413		dmarker@proskauer.com
Counsel to United Steelworkers and AFSCME	Quinn, Connor, Weaver, Davies & Rouco, LLP	Glen M. Connor, Richard P. Rouco	Two North Twentieth Street Suite 930			Birmingham	AL	35203			gconnor@qcwdr.com; rrouco@qcwdr.com
Counsel to United Steelworkers and AFSCME	Quinn, Connor, Weaver, Davies & Rouco, LLP	Nicolas M. Stanojevich	4100 Perimeter Park South			Atlanta	GA	30341			nstanojevich@qcwdr.com
Counsel to Gale Healthcare Solutions, LLC	Richelo Law Group, LLC	Thomas Richelo	8230 Grogans Ferry Road			Atlanta	GA	30350	404-983-1617		trichelo@richelolaw.com
Counsel to the Prepetition Omega Secured Parties, Omega Landlords, and Proposed DIP Lenders (OHI DIP Lender, LLC & OHI Mezz Lender, LLC)	Scroggins & Williamson & Ray, P.C.	Attn Matthew W Levin	4401 Northside Parkway, Suite 230			Atlanta	GA	30327	404-893-3880	404-893-3886	mlevin@swlawfirm.com
Creditors Committee Member / Top 30 Creditor	Shiftmed, LLC	Continental PLLC	c/o Jesus M. Suarez	255 Alhambra Circle, Suite 640		Coral Gables	FL	33134	305-677-2707		Jsuarez@continentalpllc.com
Creditors Committee Member / Top 30 Creditor	Shiftmed, LLC	Karen Gaster, General Counsel	7925 Jones Branch Drive, Suite 1100			McClean	VA	22102	513-646-7373; 305-677-2707		legal@shiftmed.com; karen.gaster@shiftmed.com
Patient Care Ombudsman for Virginia Facilities	State Long-Term Care Ombudsman	Joani Latimer	8004 Franklin Farms Drive			Richmond	VA	23229	804-565-1600		Joani.Latimer@dars.virginia.gov
Patient Care Ombudsman for Pennsylvania Facilities	State Long-Term Care Ombudsman	Margaret Barajas	555 Walnut Street, 5th Floor			Harrisburg	PA	17101	717-783-7096		Mbarajas@pa.gov
Patient Care Ombudsman for Mississippi Facilities	State Long-Term Care Ombudsman	Shelby Walker	200 S. Lamar Street	Mississippi Department of Human Services		Jackson	MS	39201	601-359-4927		shelby.walker@mdhs.ms.gov
Patient Care Ombudsman for Florida Facilities	State Long-Term Care Ombudsman	Terri Cantrell	4040 Esplande Way			Tallahassee	FL	32399	850-414-2331		cantrellt@elderaffairs.org
Patient Care Ombudsman for North Carolina Facilities	State Long-Term Care Ombudsman	Victor Orija	2101 Mail Service Center			Raleigh	NC	27699	919-855-3426		Victor.Orija@dhhs.nc.gov
Creditors Committee Member / Counsel to Healthcare Services Group, Inc.	Stevens & Lee	Robert Lapowsky, Elizabeth Rogers	620 Freedom Business Center, Suite 200			King of Prussia	PA	19406	215-751-2866		Robert.lapowsky@stevenslee.com; Elizabeth.rogers@stevenslee.com
Creditors Committee Member	Theodore Horrobin	Gordon & Partners	c/o Scott Fischer	4114 Northlake Boulevard		Palm Beach Gardens	FL	33410	561-799-5070		SFischer@fortheinjured.com
Counsel to the Official Committee of Unsecured Creditors	Troutman Pepper Locke LLP	Deborah Kovsky-Apap	875 Third Avenue			New York	NY	10022	212-704-6000		deborah.kovsky@troutman.com
Counsel to the Official Committee of Unsecured Creditors	Troutman Pepper Locke LLP	Francis J Lawall	3000 Two Logan Square	Eighteenth and Arch Streets		Philadelphia	PA	19103-2799	215-981-4481		francis.lawall@troutman.com
Counsel to the Official Committee of Unsecured Creditors	Troutman Pepper Locke LLP	Joanna J Cline	1313 N. Market Street	Hercules Plaza, Suite 5100	PO Box 1709	Wilmington	DE	19899-1709	302-777-6500		joanna.cline@troutman.com
Counsel to the Official Committee of Unsecured Creditors	Troutman Pepper Locke LLP	Matthew R Brooks, Pierce E. Rigney	600 Peachtree Street, NE, Suite 3000			Atlanta	GA	30308	404-885-3901; 404-885-3000		matthew.brooks@troutman.com; pierce.rigney@troutman.com
Creditors Committee Member / Top 30 Creditor	Twin Med LLC	David Klarner	11333 Greenstone Avenue			Santa Fe Springs	CA	90670	323-582-9900		dklarner@twinmed.com
Creditors Committee Member / Top 30 Creditor	Twin Med LLC		PO Box 847340			Los Angeles	CA	90084-7340	323-826-2230		payments@twinmed.com
Counsel to the United States of America	U.S. Department of Justice, Civil Division	Louisa A. Soulard	1100 L Street, N.W., Room 7526			Washington	DC	20005	202-514-9038	202-514-9163	louisa.soulard@usdoj.gov
Counsel to the United States of America	U.S. Department of Justice, Civil Division	Louisa A. Soulard	P.O. Box 875	Ben Franklin Station		Washington	DC	20044-0875	202-514-9038	202-514-9163	louisa.soulard@usdoj.gov
Counsel to the United States of America	U.S. Department of Justice, Tax Division	Hana Bilicki, Chase A. Burrell, Jeremy A. Rill	P.O. Box 14198			Washington	DC	20044	202-616-2904 (Bilicki); 202-514-5915 (Burrell); 202-307-0513 (Rill)	202-514-4963	Hana.Bilicki@usdoj.gov; Chase.Burrell@usdoj.gov; Jeremy.A.Rill@usdoj.gov
Securities & Exchange Commission	U.S. Securities & Exchange Commission	Office of Reorganization	950 East Paces Ferry Road NE, Suite 900			Atlanta	GA	30326-1382			
Counsel to Lakeview SNF Operations LLC, Palm Springs SNF Operations LLC, Franco SNF Operations LLC, Lake Parker SNF Operations LLC, and Vero Beach Operations, LLC	UB Greensfelder LLP	Jennifer Snyder Heis	312 Walnut Street, Suite 1400			Cincinnati	OH	45202-4029	513-698-5058	513-698-5059	jheis@ubglaw.com
United States Attorney for the Northern District of Georgia	United States Attorney Northern District of Georgia		600 Richard B Russell Bldg	75 Ted Turner Drive, SW		Atlanta	GA	30303-3309	404-581-6800	404-581-6181	
Counsel to the Internal Revenue Service	United States Attorney's Office	Vivieon Kelly Jones, Assistant US Attorney	75 Ted Turner Drive SW, Suite 600			Atlanta	GA	30303	404-581-6312	4004-581-6181	vivieon.jones@usdoj.gov

Limited Service List

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Phone	Fax	Email
Co-counsel to Davies Claims Solutions, LLC	Updike, Kelly & Spellacy, P.C.	Kevin J. McEleney	225 Asylum Street, 20th Floor			Hartford	CT	06103	860-548-2622		kmceleney@uks.com
Counsel to the Debtors' Prepetition ABL Lender (MidCap Funding IV Trust)	Vedder Price PC	Attn Kathryn L Stevens	222 North LaSalle Street, Suite 2600			Chicago	IL	60601	312-609 7803		kstevens@vedderprice.com
State Attorney General	Virginia Attorney General	Attn Bankruptcy Department	202 North Ninth St			Richmond	VA	23219	804-786-2071	804-786-1991	mailoag@oag.state.va.us
Counsel to Superior Medical Staffing and Gale Healthcare Solutions, LLC	Walters Levine & DeGrave	Heather A. DeGrave	601 Bayshore Boulevard, Suite 720			Tampa	FL	33606	813-254-7474	813-254-7341	hdegrave@walterslevine.com; jduncan@walterslevine.com
Counsel for Vista Clinical Diagnostics, LLC	Cornerstone Law Firm	Andrew S. Ballentine	1511 E. State Road 434, Suite 3049			Winter Springs	FL	32708	407-986-0529		aballentine@mycornerstonelaw.com
Counse for Duval County Tax Collector	Office Of General Counsel	City Of Jacksonville	Laura Boeckman, Assistant General Counsel	West Duval Street, Suite 480		Jacksonville	FL	32202	(904) 255-5154		lboeckman@coj.net