

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
LAVIE CARE CENTERS, LLC, ¹)	CASE NO. 24-55507-pmb
)	
Debtors)	Cases Jointly Administered
)	
_____)	Hearing Date: May 12, 2025, at 1:20 p.m.
)	
WANDA HALLOWAY, AS)	
EXECUTRIX OF THE ESTATE OF)	
JOELLEN SOMMER,)	
Movant,)	
)	
vs.)	
)	CONTESTED MATTER
PENKNOLL VILLAGE FACILITY)	
OPERATIONS, LLC,)	
Respondent.)	
_____)	

MOTION TO ALLOW LATE FILED CLAIM

COMES NOW Wanda Halloway, as the Executrix of the Estate of JoEllen Sommer (“Movant”), and hereby seeks allowance of a late filed Proof of Claim, pursuant to 11 U.S.C. §§105, 501, 502 and Fed.R.Bankr.P. 3003(c) and 9006(b)(1), showing as follows:

Claim Background

1. Respondent, Pennknoll Village Facility Operations, LLC (“Pennknoll”), is a company authorized and licensed to do business as a nursing home for the rendering of custodial

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.



or personal care to aged or disabled persons in Everett, Bedford County, Pennsylvania.

2. On or about July 15, 2022, a medical professional negligence matter was initiated by a Writ of Summons in Bedford County Court of Commons Pleas on behalf Wanda Holloway, individually and as Executrix of Joellen Sommer against Pennknoll.

3. Joellen Sommer (“Ms. Sommer”) was a resident at Pennknoll from 2018 until her untimely death on July 16, 2020.

4. While a resident at Pennknoll, Ms. Sommer suffered multiple avoidable injuries; she experienced avoidable pain and suffering and experienced an untimely death.

5. On October 4, 2023, Movant and Pennknoll agreed to settle Plaintiff’s claims against Pennknoll for \$150,000 with for the \$150,000 to be paid over 15 equal payments of \$10,000 starting in January 2025.²

6. On January 24, 2024, the Court signed off on a Stipulation between the parties that was part of the settlement terms that dismissed certain Defendants.

7. On April 30, 2024, Penknoll sent the Settlement Release to counsel for Movant.

8. On June 11, 2024, Pennknoll copied counsel for Movant on correspondence sent to the Bradford County court, including a Suggestion of Bankruptcy dated June 2, 2024.

9. On or about July 15, 2024, counsel for Movant received at their mailing address a notice of claim, instructions for notice of claim, and a July 1, 2024, Notice of Continued 341 Meeting of Creditors.

10. These documents were scanned and saved in counsel for Movant’s document management system, but counsel was not actually notified internally that the documents were received.

² A copy of an email outlining the settlement terms is attached to Mr. Watto’s Declaration filed in support hereto.

11. On or about March 11, 2025, counsel for Movant saw the notice of claim forms that were saved in counsel for Movant's electronic file.

Case Background

12. Pennknoll filed a voluntary Chapter 11 petition, Case No. 24-55631-pmb, on June 2, 2024, which case is jointly administered under the above captioned case for procedural purposes only. Debtors continue to operate their business and to manage their property as debtors and debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

13. Movant was listed as a creditor in Pennknoll's Petition, [Doc. No. 8] on page 48 of 63 of Schedule E/F Creditors Who Have Nonpriority Unsecured Claims. It is disclosed, under perjury, as "address on file;" "litigation;" "unliquidated;" "contingent" "disputed" and "undetermined." It is listed in micro sized font at line item 3.97 even though there was the aforementioned settlement of Movant's claims against Pennknoll for \$150,000 payable over 15 equal payments of \$10,000 starting in January 2025, settled by and between the parties between October 4, 2023 and April 30, 2024, months prior to the filing of the Schedules and Statement of Financial Affairs.

14. The bar date for filing Proofs of Claim was August 30, 2024 (the "Bar Date").

15. The Court confirmed Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization [Doc. No. 481] (hereinafter, "**the Plan**") with its Order entered on December 5, 2024 [Doc. No. 735]: 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 (hereinafter, "**the**

Confirmation Order). The Confirmation Order incorporated Debtor’s Plan Supplement [Doc. No. 593] (hereinafter, **“the Plan Supplement”**) and its Exhibits, including but not limited to an express procedure for addressing Unliquidated Claims. Exhibit I, beginning at page 67. [Doc. No. 593] (hereinafter, **“the Unliquidated Claims Procedures”**).

Relief Requested

16. By this Motion, Movant requests that she be allowed to file a Proof of Claim in the Settlement Amount of \$150,000.00; or, alternatively, have an Order entered allowing the proof of claim in the amount of \$150,000.00 as if the claim had been properly and appropriately scheduled in good faith, in the first instance; and have the claim deemed timely filed and eligible for participation and payment under the Unliquidated Claims Procedures and the Confirmation Order.

Basis for Relief

17. The Court may extend the time for filing a proof of claim in a Chapter 11 Case under Fed. Bankr. P. 3003(c) and 9006(b)(1) after the bar date has expired for “excusable neglect” for “cause shown” in its discretion:

[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.

18. The bankruptcy court may allow a late filed proof of claim for “excusable neglect” in accordance with Fed.R.Bankr.P. 9006(b)(1). The Supreme Court in *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd.*, 507 U.S. 380 (1992) determined that, “excusable neglect” for failing to file a claim is an equitable one, considering all relevant circumstances surrounding a party’s failure to file a claim. *Pioneer* at 395. The Court identified the following factors for excusable neglect as a mechanism for analysis: (1) whether the delay will prejudice the debtor; (2) the length

of the delay and its impact on the case; (3) whether the delay was beyond the reasonable control of the person who had the duty to perform; (4) whether the creditor acted in good faith and (5) whether the client should be penalized for actions of their counsel. *Pioneer* at 395.

19. In *Pioneer*, the Court explicitly rejected the strict standard that limited “excusable neglect” to circumstances beyond the movant's control, expressly adopted by Courts such as the Eleventh Circuit’s *In re South Atlantic Fin. Corp.*, 767 F.2d 814, 817 (11th Cir. 1985). Instead, it held that “excusable neglect” encompasses situations involving inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control. The Court emphasized that the determination of excusable neglect is an equitable one, requiring consideration of all relevant circumstances, the totality of circumstances, including the danger of prejudice to the opposing party, the length of the delay, the reason for the delay (including whether it was within the reasonable control of the movant), and whether the movant acted in good faith. The *Pioneer* decision has been widely recognized as establishing a broader, more flexible standard for excusable neglect. The Eleventh Circuit, in dicta, acknowledged the equitable nature of the excusable neglect inquiry as articulated in *Pioneer*, noting that it includes negligence and other factors. *Conn. State Dental Ass'n v. Anthem Health Plans, Inc.*, 591 F.3d 1337 (11th Cir. 2009). In yet another Eleventh Circuit case, the Court held that excusable neglect may encompass negligence based on miscommunication between a junior associate and his supervising lawyer at a firm when a secretary neglected to share information and a deadline was missed. *Cheney v. anchor Glass Container Corp.*, 71 F.3d 848 (11th Cir. 1996).

20. The *Pioneer* factors are analyzed as follows:

(a) Whether the delay will prejudice the debtor: The Plan was confirmed on December 5, 2024 with the Confirmation Order. The Unliquidated Claims Procedures

provides for unsecured creditors similarly situated to Movant to participate in a specially designed, detailed process to liquidate claims and to pay them on a prorated basis through the \$12.765 million GUC Trust. The liquidation process is in its infancy stages and enabling Movant to participate in the process facilitates fairness and equity to all similarly injured creditors. Furthermore, not allowing the claim rewards Debtor for failing to properly schedule this creditor who had a liquidated, fixed, liquidated and settled claim at the time the schedules and statement of financial affairs were filed and sworn to as accurate under oath. This factor weighs in favor of allowing the late-filed claim.

(b) The length of the delay and its impact on the case: The Plan was confirmed on December 5, 2024 with the Confirmation Order. The Unliquidated Claims Procedures provides for unsecured creditors similarly situated to Movant to participate in a specially designed, detailed process to liquidate claims and to pay them on a prorated basis through the \$12.765 million GUC Trust. The liquidation process is in its infancy stages and enabling Movant to participate in the process facilitates fairness and equity to all similarly injured creditors. This factor weighs in favor of allowing the late-filed claim.

(c) Whether the delay was beyond the reasonable control of the person who had the duty to perform: Like the errors and omissions in *Cheney, Conn. State Dental Ass'n v Anthem Health* and, even, in *Pioneer* itself, the mistake made within the firm's electronic system in failing to appropriately notice the processing of the notice of the bar date in a non-bankruptcy firm, when coupled with the fact that the claim was liquidated and fully settled and should have been scheduled to reflect those facts are excusable. As noted by these cases, there were no games being played and no efforts being undertaken to gain an advantage. It was pure oversight.

(d) Whether the creditor acted in good faith: Upon noticing the error, counsel immediately reached out to local counsel to address the issue in order to file the Motion to Allow Late Filed Claim. Counsel relied on the settlement and expected to be scheduled appropriately. Counsel acted in good faith.

(e) Whether the client should be penalized for actions of their counsel: This is a situation where there was a settlement that should have been properly scheduled under oath and was not so properly scheduled. There was an internal glitch at the firm in the scanning of the information and Movant shouldn't be penalized for this set of circumstances.

21. Given the nature of the obligation as a settled debt that was liquidated and fixed, *e.g.* not unliquidated, not contingent, not disputed, not in litigation, by virtue of a pre-petition settlement agreement; the micro type disclosures in the schedules and statement of financial affairs stating to the contrary under oath, coupled with the intricate, complex procedure implemented by Debtor and the adopted by the Court for the resolution for these specific type claims, which are to be paid in a pool of funds; a process that has not yet begun or has barely begun on a Plan that has only recently been confirmed, the *Pioneer* factors weigh in favor of allowing the late filed claim, or deeming the claim as it should have been scheduled at filing, and its participation the unliquidated claims process and protocols under the confirmed plan.

22. Attached hereto and incorporated herein as if set forth in its entirety is the Declaration of Mr. Andrew Watto in support of this Motion.

WHEREFORE, Movant request that the Court allow Movant to file a Proof of Claim, or

allow it as properly scheduled, and have such claim be deemed timely filed. Movant further requests that the Court grant such other relief as is just and proper.

Dated: April 21, 2025

STEINFELD & STEINFELD, PC

By: /s/ Shayna M. Steinfeld
Shayna M. Steinfeld; Georgia Bar No. 622895
11B Lenox Pointe, NE; Atlanta, GA 30324
(404) 636-7786; shayna@steinfeldlaw.com
Attorneys for Movant, Wanda Halloway, as the
Executrix of the Estate of JoEllen Sommer

Certificate of Service

This is to certify that on this date a true and correct copy of the forgoing Motion to Allow Late Filed Claim was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 cases through CM/ECF.

A separate certificate will reflect service on additional parties.

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OPERATIONS, LLC,)	
Respondent.)	
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NOTICE OF HEARING ON MOTION TO ALLOW LATE FILED CLAIM

PLEASE TAKE NOTICE that Wanda Halloway, as the Executrix of the Estate of JoEllen Sommer (“Movant”), filed her Motion to Allow Late Filed Claim (the “Motion”) on April 22, 2025. In the Motion, Movant seeks an order allowing a late filed claim on the grounds of improper scheduling and excusable neglect.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on **May 12, 2025 at 1:20 p.m.** in Courtroom **1202**, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, which may be attended in person or via the Court’s Virtual Hearing Room. You may join the Virtual Hearing Room through the “Dial-In and Virtual Bankruptcy Hearing Information” link at the top of the homepage of the Court’s website, www.ganb.uscourts.gov or the link on the judge’s webpage, which can also be found on the Court’s website. Please also review the “Hearing Information” tab on the judge’s webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera

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in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge's webpage.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleadings with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's Office is: Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: April 21, 2025

STEINFELD & STEINFELD, PC

By: /s/ Shayna M. Steinfeld

Shayna M. Steinfeld; Georgia Bar No. 622895

11B Lenox Pointe, NE; Atlanta, GA 30324

(404) 636-7786; shayna@steinfeldlaw.com

Attorneys for Movant, Wanda Halloway, as the
Executrix of the Estate of JoEllen Sommer

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A separate certificate will reflect service on additional parties.

Dated: April 21, 2025

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COUNTY OF PHILADELPHIA
STATE OF PENNSYLVANIA

DECLARATION OF ANDREW WATTO

ANDREW WATTO states under oath and under penalty of perjury as follows:

1. My name is Andrew Watto. I am over the age of 21 and competent to testify about the matters set forth in this Declaration. I have personal knowledge of the facts set forth herein.

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2. Respondent, Pennknoll Village Facility Operations, LLC (“Pennknoll”), is a company authorized and licensed to do business as a nursing home for the rendering of custodial or personal care to aged or disabled persons in Everett, Bedford County, Pennsylvania. On or about July 15, 2022, a medical professional negligence matter was initiated by a Writ of Summons in Bedford County Court of Commons Pleas on behalf Wanda Holloway, individually and as Executrix of Joellen Sommer against Pennknoll.

3. Joellen Sommer (“Ms. Sommer”) was a resident at Pennknoll from 2018 until her untimely death on July 16, 2020.

4. While a resident at Pennknoll, Ms. Sommer suffered multiple avoidable injuries; she experienced avoidable pain and suffering and experienced an untimely death.

5. On October 4, 2023, Movant and Pennknoll agreed to settle Plaintiff’s claims against Pennknoll for \$150,000. The payment terms of the settlement were for the \$150,000 to be paid over 15 equal payments of \$10,000 starting in January 2025. A true and correct copy of an email outlining the settlement terms is attached hereto and is incorporated herein as if set forth in its entirety.

6. On January 24, 2024, the Court signed off on a Stipulation between the parties that was part of the settlement terms that dismissed certain Defendants.

7. On April 30, 2024, Penknoll sent the Settlement Release to counsel for Movant.

8. On June 11, 2024, Pennknoll copied counsel for Movant on correspondence sent to the Bradford County court, including a Suggestion of Bankruptcy dated June 2, 2024.

9. On or about July 15, 2024, counsel for Movant received at their mailing address a notice of claim, instructions for notice of claim, and a July 1, 2024, Notice of Continued 341 Meeting of Creditors.

10. These documents were scanned and saved in counsel for Movant's document management system, but counsel was not actually notified internally that the documents were received. This was part of the way documents are scanned and handled internally.

11. On or about March 11, 2025, counsel for Movant saw the notice of claim forms that were saved in counsel for Movant's electronic file.

12. A review of Schedule E/F of Penknoll's Schedules and Statement of Financial Affairs shows that Movant was listed as a creditor in Pennknoll's Petition, [Doc. No. 8] on page 48 of 63 of Schedule E/F Creditors Who Have Nonpriority Unsecured Claims. It is disclosed as "address on file;" "litigation;" "unliquidated;" "contingent" "disputed" and "undetermined." It is listed in micro sized font at line item 3.97 even though there was the aforementioned settlement of Movant's claims against Pennknoll for \$150,000.00 payable over 15 equal payments of \$10,000.00 starting in January 2025, settled by and between the parties between October 4, 2023 and April 30, 2024, months prior to the filing of the Schedules and Statement of Financial Affairs under penalty of perjury.

13. As soon as I saw the documents indicating that the bar date was issued; that the claim was not properly listed as settled, liquidated and non-contingent and that a claim was necessary and appropriate, I reached out to local counsel to file a Motion to Allow Late Filed Claim, in good faith and without any interest in playing games or gaining any advantage.

14. The firm, McEldrew Purtell is one of personal injury attorneys and not bankruptcy lawyers.

Executed on this 21 day of April, 2025.



Andrew Watto

Subject: Fw: Court Approval: Confirming Settlement: 3677 107 Sommer v. Pennknoll Village
Date: Monday, April 21, 2025 at 3:52:13 PM Eastern Daylight Time
From: Andrew Watto
To: Shayna Steinfeld

Get [Outlook for iOS](#)

From: Susan Kostkas <skostkas@walshlegal.net>
Sent: Wednesday, October 4, 2023 12:33 PM
To: Andrew Watto <AWatto@mceldrewpurtell.com>
Cc: Kim Smith <ksmith@mceldrewpurtell.com>; John M. Noble <john@noblemediation.com>
Subject: Court Approval: Confirming Settlement: 3677 107 Sommer v. Pennknoll Village

Also, just to confirm, plaintiff will secure court approval of the settlement, correct?

From: Andrew Watto <AWatto@mceldrewpurtell.com>
Sent: Wednesday, October 4, 2023 12:30 PM
To: Susan Kostkas <skostkas@walshlegal.net>
Cc: Kim Smith <ksmith@mceldrewpurtell.com>; John M. Noble <john@noblemediation.com>
Subject: RE: Confirming Settlement: 3677 107 Sommer v. Pennknoll Village

Confirmed. Thanks for working with us.

Andrew

From: Susan Kostkas <skostkas@walshlegal.net>
Sent: Wednesday, October 4, 2023 12:27 PM
To: Andrew Watto <AWatto@mceldrewpurtell.com>
Cc: Kim Smith <ksmith@mceldrewpurtell.com>; John M. Noble <john@noblemediation.com>
Subject: Confirming Settlement: 3677 107 Sommer v. Pennknoll Village

Good afternoon, Andrew,

This email confirms that the parties have agreed to settle this matter for \$150,000, which will be funded by 15 or 16 equal payments made on or before the last day of each month beginning January 2025.

This settlement is also contingent upon:

- Release terms acceptable to the parties, including but not limited to confidentiality, non-disparagement, and lien indemnification.
- Parties bearing their own costs and expenses, except for the mediator's expense. Defendants will pay 100% of the mediator's expense.
- Stipulating to the dismissal of all defendants except for Defendant Pennknoll Village and Pennknoll Village Operations, LLC d/b/a Pennknoll Village

Please confirm the express and specific consent of your client, Plaintiff Wanda Holloway, to accept the terms of this settlement via a reply to this email.

I appreciate the herculean efforts of you and John to reach this amicable resolution!

Thank you,

Susan

Susan A. Kostkas
Walsh Barnes, P.C.
2100 Corporate Drive, Suite 300
Wexford, PA 15090
Main: 412-258-2255
Direct: 412 261-3389
Cell: 412-716-1977
Fax: 412-263-5632
skostkas@walshlegal.net