IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re SC HEALTHCARE HOLDING, LLC *et al.*, Debtors.[1]	Chapter 11 Case No. 24-10443 (TMH) Jointly Administered Hearing Date: May 13, 2024 at 9:30 a.m. (EDT) Obj. Deadline: May 6, 2024 at 4:00 p.m. (EDT) Re: D.I. 38 & 97

COLUMN FINANCIAL, INC.'S SUPPLEMENTAL OBJECTION TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) GRANTING SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED CREDIT PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) AUTHORIZING THE DEBTORS TO ENTER INTO AGREEMENTS WITH JMB CAPITAL PARTNERS LENDING, LLC, (VI) AUTHORIZING NON-CONSENSUAL USE OF CASH COLLATERAL, (VII) SCHEDULING A FINAL HEARING, AND (VIII) GRANTING RELATED RELIEF

Column Financial, Inc. ("**Column**"), as successor in interest to Sector Financial Inc. ("**Sector**"), as administrative agent and collateral agent (the "**Column Agent**") for the Column Lenders (as defined below),[2] hereby files this supplemental objection (this "**Supplemental Objection**") with respect to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate*

[1] The last four digits of SC Healthcare Holding, LLC's tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, 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 will be made available on a website of the Debtors' claims and noticing agent at www.kcclc.net/Peterson.

[2] The Column Agent and Column Lenders are referred to in some documents as the Sector Agent and Sector Lenders.

Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter Into Agreements With JMB Capital Partners Lending, LLC, (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief [Dkt. No. 38] (the "**DIP Financing Motion**").[3] In support of this Supplemental Objection, Column respectfully states as follows:

PRELIMINARY STATEMENT

1. Column continues its efforts to reach consensus with the Debtors, DIP Lender and, other interested parties with respect to the proposed DIP Financing with the hope of being fully supportive of its approval on a final basis. However, as of the filing of this Supplemental Objection, the parties have not resolved all of the open issues. Therefore, Column is compelled to file this Supplemental Objection and to preserve all of its objections to the proposed DIP Facility and DIP Liens, including, without limitation, the proposed priming by the DIP Liens of the Column Liens (defined below) on the Column Collateral (defined below). Column further preserves its rights to request additional adequate protection with respect to its Column Liens and Column Collateral, including, without limitation, second-priority replacement liens (subject only to the DIP Liens) on all of the Debtors' assets to the extent Column bears a disproportionate repayment burden with respect to the DIP Financing and monthly cash payments equal to the interest accrual on the Prepetition Column Loan (defined below) and the payment of all costs, fees, expenses (including attorneys' fees and legal expenses) and other charges accrued, accruing or chargeable under the Column Loan Documents (defined below).

2. Column's primary objection is that the Column Liens on the Column Collateral are not being adequately protected with respect to the DIP Loan and DIP Liens as proposed.

[3] Unless otherwise defined in this Supplemental Objection, capitalized terms shall have the meaning ascribed to them in the DIP Financing Motion.

Specifically, the Debtors and DIP Lender propose to prime the Column Liens with the DIP Liens in the full amount of the DIP Financing, which is $45,000,000, and to rely almost exclusively on Column's equity cushion in the Column Collateral as adequate protection of the Column Liens.[4] Column agrees that it is over-secured and that there is, therefore, an equity cushion in the Column Collateral over and above the Prepetition Column Loan;[5] however, the equity cushion is not sufficient to adequately protect Column's interests in the Column Collateral if all or substantially all of the DIP Financing ($45,000,000) is secured by and recovered from the Column Collateral. This is a real possibility, as the other potential sources of funds to repay the DIP Facility are either de minimis—based on the Myers Declaration (defined below), the aggregate value of the facilities in the Miscellaneous Silo (defined below) ranges from only approximately $12,500,000 on the low end to approximately $24,200,000 on the high end, with a mid-range value of approximately $18,225,000—or entirely theoretical at this point—the HUD Lenders (defined below) have not agreed to allow priming of the HUD Collateral (defined below), and X-Caliber (defined below) seeks to have the X-Caliber Debtors (defined below) dismissed from the case.

3. Based on the *Declaration of Mark L. Myers in Support of Debtors' (X) Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter into Agreements with JMP Capital Partners Lending,*

[4] Column acknowledges that the Debtors also propose to provide each Prepetition Lender with replacement liens on the Debtors' assets, allowed super-priority administrative expense claims, and monthly cash-flow reporting and other reports required to be delivered under the DIP Facility as additional adequate protection. These additional offers of adequate protection still fall far short of what is needed to truly adequately protect Column's interests in the Column Collateral, as contemplated by the Bankruptcy Code.

[5] Because Column is over-secured, it is entitled to recover post-petition interest as well as all costs, fees, expenses (including attorneys' fees and expenses) and other charges accrued, accruing, or chargeable under the Column Loan Documents.

LLC, (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief; and (Y) Omnibus Objection to (A) the Emergency Motion for an Order (I) Dismissing the Subject Chapter 11 Cases, (II) for Abstention, or (III) Appointment of Receiver as the Chapter 11 Trustee and (B) the Emergency Motion to Excuse Receiver's Compliance with 11 U.S.C. § 543(a) & (b) [Dkt. No. 258] (the "**Myers Declaration**") filed by the Debtors in support of the DIP Motion, the value of Column's Collateral is $90,571,737 on the low end, $121,266,440 in the mid-range, and $152,234,488 on the high end.[6] The value of the Column Collateral falls somewhere between the low and medium values. The balance of the Prepetition Column Loan is no less than $65,000,000. Thus, the equity cushion on the Column Collateral falls somewhere between approximately $25,500,000 and approximately $56,300,000 on the Prepetition Column Loan (without even considering the accruing post-petition interest, costs, fees, and other charges to which Column is entitled that are eroding the equity cushion). If the Column Collateral is required to bear the burden of the entire $45,000,000 of the DIP Financing, Column's equity cushion will be substantially eroded, at best, and potentially entirely destroyed.

4. The Debtors' prepetition credit facilities are structured in such a way that each Prepetition Lender (defined below) has its own separate "silo" of Debtors and collateral—that is, each Prepetition Lender's respective prepetition loan documents obligate the separate Debtors which have granted that Prepetition Lender a lien in collateral separate and distinct from that of the other Debtors and Prepetition Lenders. There is no joint and several liability between Debtor silos or cross-collateralization. The DIP Facility, however, seeks to ignore this siloing of the

[6] Column does not concede: (i) that the Myers Declaration is admissible evidence in support of the DIP Financing; (ii) that Mr. Myers, if he is called to testify, is qualified to testify as to the value of the Column Collateral; or, (iii) even if Mr. Myers is qualified to testify as to value, that the Court should accept the values he proposes. Column reserves all objections with respect to the Myers Declaration and any proffered testimony of Mr. Myers and further reserves the right to introduce rebuttal evidence at the hearing should such rebuttal evidence be required.

Debtors' obligations and assets and instead proposes that all of the Debtors will be jointly and severally obligated for the entirety of the DIP Facility and that the DIP Financing will be secured by priming liens on all of the Debtors' assets on an enterprise-wide basis. Thus, the liens of each Prepetition Lender are primed for the full amount of the DIP Facility regardless of the amount of the DIP Facility used by such Prepetition Lender's Debtors or the value of its collateral. In its current iteration, the DIP Facility does not proportionally allocate either the risk of the DIP Facility and the priming liens nor the burden of repayment of the DIP Facility.

5. If not modified, this structure will lead to inequitable outcomes and a lack of adequate protection of the Prepetition Lenders' interests in their respective collateral. First, any Prepetition Lender whose collateral is sold first may bear the entire, or at least a disproportionate, burden of repaying the DIP Financing if the proceeds are paid to the DIP Lender without some equitable allocation of the DIP Facility. This potential is a recipe for chaos and an unnecessarily contentious bankruptcy process. Second, if this Court does not permit the Debtors and the DIP Lender to prime the HUD Liens and X-Caliber Liens, then the Column Collateral will bear substantially all of the risk and burden[7] of the DIP Facility, even though the other silos will reap the benefits of the DIP Facility funds without any of the attendant risks. This scenario is, on its face, inequitable and unjust and cannot be approved under section 364 of the Bankruptcy Code. Finally, even if the Court permits the priming of the HUD Liens or the X-Caliber Liens, the Column Collateral is the more valuable of the Debtors' assets and has the largest equity cushion. Therefore, without some fair and equitable allocation of the burden of repaying the DIP Financing among the various silos, Column will be prejudiced and not adequately protected.

[7] As stated above, the facilities in the Miscellaneous Silo have a relatively de minimis aggregate value and equity cushion.

6. In light of these likely results, Column's Liens and interests in the Column Collateral are not being adequately protected from the consequences of priming the Column Liens. None of the DIP Financing Motion, the Myers Declaration, nor the *Declaration of David R. Campbell in Support of Debtors' Chapter 11 Petitions and First Day Pleadings* [Dkt. No. 44] (the "**Campbell Declaration**" and, together with the Myers Declaration, the "**Valuation Declarations**")[8] provide any assurance to Column (or the other Prepetition Lenders) that they will be adequately protected in the event the DIP Financing Motion is granted and their liens primed. The Valuation Declarations provide vague and unsubstantiated data to support the Debtors' contention that each secured lender "enjoys a substantial equity cushion." As detailed below, however, this equity cushion provided by the Debtors is not sufficient on its own to provide Column with adequate protection in a situation in which either: (1) the risks and repayment burdens of the DIP Facility are not proportionally and equitably allocated among the various Prepetition Lenders; or (2) the Debtors are unable to prime the other Prepetition Lenders and Column is left to shoulder the risks and burdens of the entire DIP Facility on its own. Aside from the supposed equity cushion, the Debtors provide no other evidence that Column would be adequately protected under the DIP Financing Motion.

7. The only way the Column Liens and Column's interests in the Column Collateral can be adequately protected if the DIP Liens are permitted to prime the Column Liens is if (a) there is a mechanism in place (i.e., the "siloing mechanism" discussed below and referenced in the

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[8] Column assumes that the Debtors will rely upon the Myers Declaration, as opposed to the Campbell Declaration, at the final hearing on the DIP Financing Motion. However, to the extent the Debtors do rely on the Campbell Declaration, Column reserves the right to object to or refute any of the information contained therein or the methodology used by Mr. Campbell to reach his conclusions. Further, as with the Myers Declaration, Column does not concede: (i) that the Campbell Declaration is admissible evidence in support of the DIP Financing; (ii) that Mr. Campbell, if he is called again to testify, is qualified to testify as to the value of the Column Collateral; or, (iii) even if Mr. Campbell is qualified to testify as to value, that the Court should accept the values he proposes. Column reserves all objections with respect to the Campbell Declaration and any proffered testimony of Mr. Campbell and further reserves the right to introduce rebuttal evidence at the hearing should such rebuttal evidence be required.

Interim DIP Order) that equitably allocates the burden of repaying the DIP Financing between the various Debtor silos so that the Column Collateral (and any proceeds of the same) bears only a proportionate share of repaying the DIP Financing based on the percentage of the DIP Facility utilized by the Column Debtors (or on some other equitable basis such as by the direct costs of the facilities and an allocation of the general costs by the number of beds, but in no event based on the timing of the sale of such collateral); (b) to the extent the Column Collateral ends up bearing more than its proportionate share of repaying the DIP Financing, Column is given replacement liens on all of the Debtors other assets that are subordinate only to the DIP Financing and DIP Liens; (c) in addition to the replacement liens contemplated in (b) above, Column is provided adequate protection liens on all of the Debtors' other assets for any diminution suffered by Column in the value of the Column Collateral that are subordinate only to the DIP Liens and the prepetition liens of the other Prepetition Lenders; and (d) the Debtors are required to make monthly payments to Column in an amount equal to the interest accrued on the Prepetition Column Loan and all costs, fees, expenses (including attorneys' fees and expenses) and other charges accrued, accruing, or chargeable under the Column Loan Documents.

8. Column thus respectfully requests that the Court deny approval of the DIP Financing Motion on a final basis, as the Debtors are not able to provide Column with adequate protection of its interests.

BACKGROUND

9. On March 20, 2024 (the "**Petition Date**"), each of the above-captioned debtors (collectively, the "**Debtors**") commenced its respective Chapter 11 Case.

A. The Debtors' Pre-Petition Credit Arrangements

10. To understand the DIP Facility, it is important to understand the Debtors' pre-petition secured credit arrangements. Fundamentally, the Debtors had four silos of secured debt. Each silo has different lenders, and the collateral for each silo, which fundamentally consists of the real and personal property of different senior care facilities, is unique to that silo.

i. Column's Prepetition Debt: The "Sector Silo"

11. Column's silo of debt is commonly referred to as the "**Sector Silo**" as a historical reference to Sector Financial, Inc., Column's predecessor in interest with respect to the Prepetition Column Loan.[9] Each of the Debtors listed on Exhibit A hereto is a borrower in the Sector Silo (the "**Column Debtors**"). In August of 2020, Column and the other lenders party thereto (collectively, the "**Column Lenders**") entered into a Loan Agreement (the "**Column Loan Agreement**") and related Loan Documents[10] thereto (the "**Column Loan Documents**") with the Column Debtors, pursuant to which the Column Lenders provided the Column Debtors with a loan in the original principal amount of $88,750,000. As of the Petition Date, the Column Debtors were indebted to the Column Lenders in an amount not less than $65,000,000 (the "**Prepetition Column Loan**"). The Column Lenders are collectively the Debtors' largest creditor.

12. The advances made pursuant to the Column Loan Documents are secured by properly perfected (a) first-priority liens and security interests (the "**Column Liens**") on all or substantially all of the assets of the Column Debtors, including the real estate and improvements that comprise the properties on which the Column Debtors operate their senior living facilities,

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[9] Unless the context dictates otherwise, references to Column and Sector in this Supplemental Objection are interchangeable.

[10] As defined in the Column Loan Agreement.

and (b) second priority liens and security interests on the Column Debtors' accounts receivable and the proceeds thereof (collectively, the "**Column Collateral**").

ii. The X-Caliber Silo

13. X-Caliber Funding, LLC, in its capacity as servicer for U.S. Bank, N.A., as trustee of XCAL 2019-IL-1 Mortgage Trust's ("**X-Caliber**") silo of debt is commonly referred to as the "**X-Caliber Silo**". X-Caliber extended $40,000,000 of principal to certain of the Debtors (the "**X-Caliber Debtors**"), which is evidenced by a February 21, 2021 amended and restated loan agreement, and an October 31, 2019 promissory note (the "**X-Caliber Debt**"). The X-Caliber Debt is purportedly secured by liens on all of the X-Caliber Debtors assets (the "**X-Caliber Liens**"), including the real property, improvements, and accounts (the "**X-Caliber Collateral**").

14. On March 21, 2024, X-Caliber filed the *Emergency Motion of X-Caliber Funding LLC to Excuse Receiver's Compliance with 11 U.S.C. § 543(a) & (b)* [Dkt. No. 59] and the *Emergency Motion of X-Caliber Funding LLC for an Order (I) Dismissing the Subject Chapter 11 Cases, (II) for Abstention, or (III) Appointment of Receiver as the Chapter 11 Trustee* [Dkt. No. 60] (the two motions together the "**X-Caliber Motions**"). In short, the X-Caliber Motions assert that: (a) pursuant to an order of the United States District Court for the Northern District of Illinois appointing a receiver over the operations and assets of the X-Caliber Debtors, the X-Caliber Debtors were deprived of authority to file for bankruptcy and that the X-Caliber Debtors should thus be dismissed from the case; and (b) that the receiver should be relieved of the requirement to turnover estate assets to the Debtors so that the receiver may continue to oversee the X-Caliber Debtors' facilities. A hearing on the X-Caliber Motions is currently set for May 13, 2024, and, if necessary, May 14, 2024.

iii. The HUD Silo

15. Another silo of debt is commonly referred to as the "**HUD Silo**." Grandbridge Real Estate Capital LLC ("**Grandbridge**"), Berkadia Commercial Mortgage LLC ("**Berkadia**") and Lument Real Estate Capital, LLC ("**Lument**") (collectively, the "**HUD Lenders**") are the lenders in the HUD Silo. Grandbridge has made loans to three separate Debtors, which are purportedly secured by the assets of those respective Debtors. Grandbridge claims that as of the Petition Date, its Debtors are indebted to it in the approximate amount of $8,000,000. Lument has made loans to five separate Debtors, which are purportedly secured by the assets of those respective Debtors. Berkadia has made loans to two separate Debtors, which are purportedly secured by the assets of those respective Debtors (collectively with the assets securing the loans made by Grandbridge and Lument, the "**HUD Collateral**," and the liens thereon the "**HUD Liens**"). Berkadia claims that as of the Petition Date, its Debtors are indebted to it in the approximate amount of $3,000,000. Lument claims that as of the Petition Date, its Debtors are indebted to in the approximate amount of $11,000,000.

iv. The Miscellaneous Silo

16. The last silo is the "**Miscellaneous Silo**." The Miscellaneous Silo consists of a number of mainly regional bank lenders (such lenders, collectively with Column, X-Caliber, and the HUD Lenders, the "**Prepetition Lenders**") that have made loans to particular Debtors that are purportedly secured by the assets of those Debtors. The total debt of the Miscellaneous Silo is approximately $13,000,000.

B. The Debtors' Proposed DIP Financing

17. On the Petition Date, the Debtors filed the DIP Financing Motion seeking, *inter alia*, authority for each of the Debtors, jointly and severally, to obtain non-amortizing priming

superpriority senior secured postpetition financing (the "**DIP Facility**," and the definitive documentation evidencing the DIP Facility, the "**DIP Documents**") from JMB Capital Partners Lending, LLC (the "**DIP Lender**") in an aggregate principal amount of up to $45,000,000 (the "**DIP Financing**"). The DIP Documents contemplate a commitment fee equal to 2.0% of the total amount of the DIP Financing (the "**Commitment Fee**") and also contemplate an exit fee equal to 8.0%[11] of the total amount of the DIP Financing (the "Exit Fee") to be paid to the DIP Lender by the Debtors.

18. Of the DIP Financing, $15,000,000 (the "**Interim Advance**") was made available to the Debtors upon entry of the interim order granting the DIP Financing Motion (the "**Interim Order**"). The Interim Advance has been fully drawn. Based on data provided by the Debtors, only a portion of the DIP Facility loan proceeds will be used by the Column Debtors; the balance will be used by Debtors in other silos.

19. To secure the DIP Facility, the Debtors propose to grant the DIP Lender a priming first lien security interest on all of the Debtor's assets, including the Column Collateral and proceeds thereof, for the entire amount of the DIP Financing. In return, the Debtors propose the following as adequate protection for the secured creditors: (1) valid, perfected replacement security interests and liens on all assets of the Debtors in an amount equal to the aggregate diminution in value of each Prepetition Lender's interests in its prepetition collateral; (2) superpriority

[11] The Exit Fee originally proposed by the DIP Lender was 4.0%. However, during the first-day hearing on the DIP Financing Motion, the DIP Lender increased the Exit Fee to 8.0% on the entire amount of the DIP Financing as a *quid pro quo* for agreeing not to prime the HUD Liens with respect to the Interim Advance (defined below). The Court noted that this increase, combined with the Commitment Fee and the 12% interest rate on the DIP Facility, was "extraordinarily expensive" and would be taken up again at the final hearing. *See* Audio Recording of March 22, 2024 Hearing [Dkt. No. 88] at 3:56:27–3:57:03. This increased Exit Fee is both excessive in relation to typical DIP exit fees and unnecessary given the overcollateralization of the DIP Financing, and it should be disallowed. If the Court does allow the increased Exit Fee, the increase (i.e., the additional 4%) should be borne solely by the HUD Silo, inasmuch as the increased Exit Fee is a direct result of the HUD Lenders withholding their consent to the priming of the HUD Liens.

administrative expense claims as provided under section 507(b) of the Bankruptcy Code; and (3) monthly cash-flow reporting and other reports required to be delivered under the DIP Facility. The replacement liens and superpriority claims are subordinate to, among other things, the DIP Liens and DIP Superpriority Claims, respectively. The Debtors also claim that the secured lenders enjoy a substantial equity cushion based on the facility valuations contained in the Myers Declaration.

20. On March 22, 2024, Column filed *Column Financial Inc.'s Limited Objection to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter into Agreements with JMB Capital Partners Lending, LLC, (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief* [Dkt. No. 78] (the "**Limited Objection**") objecting to, among other things, the terms of the DIP Facility that impact the Column Lenders' adequate protection. The Limited Objection is incorporated herein by reference. The Limited Objection, and this Supplemental Objection, constitute a request for adequate protection by Column as provided by Section 363(e) of the Bankruptcy Code.

21. The HUD Lenders have filed additional objections to the DIP Financing Motion (the "**HUD Objections**"). The HUD Objections assert that the Debtors may not allow the priming of the HUD Lenders' prepetition liens because, among other reasons, doing so would violate the National Housing Act and other regulations of the United States Department of Housing and Urban Development ("**HUD**"). Should this Court sustain the HUD Objections, it would mean that a sizeable silo of the Debtors' assets would not be subject to the DIP Lender's priming liens and

would thus shift the risks and burdens of the DIP Facility, which would otherwise be shared by the HUD Lenders, onto each of the other Prepetition Lenders.

22. The Myers Declaration contemplates, with respect to the Column Collateral, (i) a low market value of $90,571,737, (ii) a mid-range market value of $121,266,440, and (iii) a high market value of $152,234,488. Based on these numbers, and based on total debt owed to Column of no less than $65,000,000, the equity cushion on the Column Collateral would be: (i) for a low market value, approximately $25,500,000; (ii) for a mid-range market value, approximately $57,300,000; and (iii) for a high market value, approximately $87,200,000.

OBJECTION

23. Under 11 U.S.C. § 364(d), the Court may authorize the Debtors to prime the Column Liens via the DIP Facility if the Debtors are unable to obtain credit otherwise and if there is adequate protection of Column's interests in the Column Collateral. 11 U.S.C. § 364(d)(1). Priming is "extraordinary relief requiring a showing that the loan to be subordinated is adequately protected." *In re LTAP US, LLLP*, No. 10-14125 KG, 2011 WL 671761, at *3 (Bankr. D. Del. Feb. 18, 2011).[12] The Debtors have the burden of proof on the issue of adequate protection. 11 U.S.C. § 364(d)(2).

24. While adequate protection is not expressly defined in the Bankruptcy Code, "section 361 states that it may be provided by (1) periodic cash payments; (2) additional or replacement liens; or (3) other relief resulting in the 'indubitable equivalent' of the secured creditor's interest in such property." *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994). The third possibility "is regarded as a catchall" that allows courts "discretion in fashioning

[12] A copy of this unpublished opinion is attached hereto as Exhibit B.

the protection provided to a secured party." *Id.* Whether adequate protection exists is a determination made on a case-by-case basis. *Id.*

25. In order for adequate protection to exist, "the prepetition creditor must be provided with the same level of protection it would have had absent the post-petition financing since it is entitled to retain the benefit of its prebankruptcy bargain." *In re Stoney Creek Techs., LLC*, 364 B.R. 882, 890 (Bankr. E.D. Pa. 2007); *see also In re Swedeland*, 16 F.3d at 564 (holding that adequate protection "should provide the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition superpriority financing"); *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987) ("The whole purpose in providing adequate protection for a creditor is to ensure that the creditor receives the value for which the creditor bargained prebankruptcy."); *In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 749 (Bankr. S.D. Fla. 2010) ("[E]nsuring that a creditor receives the value for which it bargained before the debtor had filed for bankruptcy is the principle's *raison d'être*.").

26. Additionally, equitable considerations must be taken into account when determining whether adequate protection exists. *In re Colrud*, 45 B.R. 169, 176 (Bankr. D. Alaska 1984) ("providing adequate protection is a matter of equitable considerations"); *In re Dynaco Corp.*, 162 B.R. 389, 394 (adequate protection "must be based upon equitable considerations arising from the particular facts of each proceeding"). More often than not, courts will look to "the presence or absence of an equity cushion" in determining whether adequate protection exists. *Matter of Cardell*, 88 B.R. 627, 632 (Bankr. D. N.J. 1988). While the existence of an equity cushion can be sufficient for a showing of adequate protection, it is "only one factor in determining whether the creditor's interest is adequately protected." *In re Pannell*, 12 B.R. 51, 54 (Bankr. E.D. Pa. 1981); *see also In re Colrud*, 45 B.R. at 177 ("equitable considerations other than the equity

cushion must [also] be taken into account in determining if the creditor is adequately protected"). Just as adequate protection is determined on a case-by-case basis, "equitable considerations, *arising from the facts of each case*, should be examined." *In re Callister*, 15 B.R. 521, 530 (Bankr. D. Utah 1981) (emphasis added). This goes for equity cushions as well. *See In re Tucker*, 5 B.R. 180, 183 (Bankr. S.D.N.Y. 1980) ("the adequacy of an equity cushion, stated either as a dollar amount or as a percentage of the estimated fair market value of the property, must ultimately be determined upon equitable considerations arising from the particular facts of each proceeding"). As explained in *In re Tucker*, "the amount of an equity cushion which may be adequate protection . . . in one case, may be insufficient to constitute adequate protection . . . in another case." *Id.* at 183.

27. Looking specifically at equity cushions, is well settled that a cushion of at least 20% is required in order to constitute adequate protection. *In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 306 (Bankr. D. Del. 2011). Even then, an equity cushion may not on its own constitute adequate protection, as courts look to other factors in making their determination. *In re Heath*, 79 B.R. 616, 618 (Bankr. Ed. Pa. 1987). Factors commonly considered in addition to the size of the equity cushion include "(1) the rate at which the cushion will be eroded; (2) whether periodic payments can be made to mitigate the erosion; (3) the likelihood of a reasonably prompt sale; (4) debtors probability of success (in a reorganization); (5) the availability of other protection for the creditor." *Id.* Thus, even if an equity cushion is sufficient in size, where it is "likely to erode, it cannot, standing alone, constitute adequate protection." *In re Shaw Industries*, 300 B.R. 861, 866 (Bankr. W.D. Pa. 2003).

28. As detailed *supra*, Column and the other Prepetition Lenders bargained for their own collateral structure whereby each of the Prepetition Lenders have their own collateral that is

not exposed to the claims of other lenders. This structure spreads the risk of enterprise-wide financial difficulties across multiple lenders—or at least reduces the risk borne by each individual lender. In the case of a liquidation, each Prepetition Lender would be able to look to its silo of collateral, and its silo alone, for recovery of the debt owed to it.

29. The DIP Facility in its current iteration completely ignores this siloing of collateral. The Debtors propose to provide the DIP Lender with priming liens across *all* of the Debtors' assets regardless of which Prepetition Lender's silo a given asset may belong in. Additionally, each of the Debtors would be jointly and severally liable for the entire $45,000,000 DIP Financing. This takes a prepetition arrangement whereby each Prepetition Lender bore only the risks associated with its particular loan and the value of its particular collateral and turns it on its head. Under the DIP Facility as proposed, each Prepetition Lender potentially bears the risk of paying for the entirety of the DIP Facility regardless of the amount of debt owed to that Prepetition Lender and regardless of the value of that Prepetition Lender's collateral.

30. The Debtors assert, through the Valuation Declarations, that the Prepetition Lenders are adequately protected because each is over-secured. Notwithstanding the fact that the Valuation Declarations contain brief, vague, and unsubstantiated explanations as to how their data were produced, as well as the fact that it involved "numerous and significant subjective determinations, which may or may not prove to be correct,"[13] the figures provided therein do not demonstrate that the Prepetition Lenders generally and Column specifically are adequately protected.

31. As to Column specifically, the Debtors' low-end estimates put Column's equity cushion at only approximately $25,500,000, and the mid-range estimates put Column's equity

[13] Campbell Decl. ¶ 20; Myers Decl. ¶ 27.

cushion at approximately $57,300,000. However, this figure does not take the DIP Financing into account. Accounting for the full amount of the $45,000,000 DIP Financing, Column's low-end equity cushion is entirely eliminated—and in fact negative—and the mid-range equity cushion is reduced to only approximately $8,300,000, or approximately a 7% equity cushion on the mid-range value of the Column Collateral. This clearly is not sufficient for adequate protection. *See In re JER/Jameson*, 461 B.R. at 306 (holding that a 9% equity cushion, when comparing the equity cushion to the value of the collateral, is insufficient to constitute adequate protection); *In re McKillips*, 81 B.R. 454, 458 (Bankr. N.D. Ill. 1987) ("Case law has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection." (collecting cases)).

32. When considering the particular equities of this case, it becomes even more clear that Column is not adequately protected—and cannot be adequately protected—under the current iteration of the DIP Facility.

33. The DIP Facility does not proportionally allocate among the Prepetition Lenders their relative exposure—i.e., the amount of the DIP Financing that the DIP Lender would be able to recover from a given silo. Nor does the DIP Facility provide a methodology for equitably repaying the DIP Financing—in other words, there is no system in place to ensure that a given Prepetition Lender will not shoulder a disproportionate burden as to repayment of the DIP Lender if, for instance, that Prepetition Lender's silo of collateral is sold off first to repay the DIP Financing. Column and the other Prepetition Lenders bargained prepetition for a siloed loan structure in which each Prepetition Lender would only bear the risk attendant to the amount of its loan and would only be able to look to its particular collateral to satisfy that debt. Because the DIP Facility ignores this structure, Column and the other Prepetition Lenders are denied the benefit of their prepetition bargains and cannot be adequately protected. *See In re Swedeland*, 16 F.3d at

564 (holding that an adequate-protection proposal "should provide the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition superpriority financing"); *In re Stoney Creek Techs.*, 364 B.R. at 890 ("[T]he prepetition creditor must be provided with the same level of protection it would have had absent the post-petition financing since it is entitled to retain the benefit of its prebankruptcy bargain.").

34. The current structure of the DIP Facility has the potential to lead to inequitable and potentially disastrous outcomes. First, each Prepetition Lender will be incentivized to position its collateral to be sold last—or at least after the DIP Financing has been paid off. Without a structure in place to proportionally or equitably allocate the funds that are to be paid back to the DIP Lender or redistributed to the various Prepetition Lenders, a Prepetition Lender would be best served if their collateral is sold off later in the process. This is because the proceeds from collateral that is sold off first will go first to repay the DIP Lender to satisfy its priming liens, and only after the DIP Financing is entirely paid off will funds begin to flow back to the Prepetition Lenders. But because the Prepetition Lenders' collateral is siloed as to the Prepetition Lenders—and not siloed as to the DIP Lender—there is no guaranty that a given silo will not be depleted disproportionately, or perhaps entirely, before the DIP Financing is fully paid off. As such, any Prepetition Lender whose collateral is sold first may bear the entire burden of repaying the DIP Facility. Aside from the clearly inequitable nature of this arrangement, it will also lead to a chaotic and highly contentious bankruptcy process.

35. Second, the Debtors may be unable to prime the liens of some of the Prepetition Lenders (e.g., the HUD Lenders and X-Caliber Lenders), leaving the remaining Prepetition Lenders to bear an even greater risk and repayment burden while the unprimed Prepetition Lender is able to reap the benefits of the DIP Financing funds with none of the risks or burdens. Such a

scenario is hardly farfetched, as the HUD Lenders seek a determination that their liens cannot, by law, be subject to priming, and the X-Caliber Lenders seek to have the X-Caliber Debtors dismissed from the case, thus removing all value that the Debtors and remaining Prepetition Lenders could hope to use from the X-Caliber Collateral to pay off the DIP Facility.[14] A worst-case scenario would be one in which one Prepetition Lender, such as Column, is the only Prepetition Lender whose liens are primed. In such a scenario, Column, as the sole primed Prepetition Lender, would bear *all* of the risks and burdens of the DIP Facility. If none of the other Prepetition Lenders are primed, then any proceeds of their collateral would go first to pay their prepetition liens, whereas the proceeds of the Column Collateral would go first to pay the DIP Lender and then, only after the DIP Financing has been fully repaid entirely with the proceeds of the Column Collateral, would proceeds be applied to the Prepetition Column Loan. In no way would this be a just or equitable result, nor would it be appropriate under the law of this circuit because in such a circumstance, the Debtor could not adequately protect the Column Lenders. *See In re JER/Jameson*, 461 B.R. at 306 (holding that a 9% equity cushion "is not sufficient to constitute adequate protection alone"); *see also Ukrainian Sav. & Loan Assoc. v. Trident Corp.*, 22 B.R. 491, 495–96 (E.D. Pa. 1982) (holding that an equity cushion of approximate 11% did not adequately protect the secured lender).

36. Finally, even if the Court permits the priming of the HUD Liens and/or the X-Caliber Liens (assuming that the X-Caliber Debtors even remain in the case), according to the Myers Declaration the Column Collateral is, by a wide margin, the most valuable silo of the Debtors' assets and has the largest equity cushion. Column is thus very likely to bear a

[14] Column would also note that to the extent the Debtors are unsuccessful in keeping the X-Caliber Debtors in the case or in priming the X-Caliber Liens, the extensive and costly litigation as to the X-Caliber Motions and the fees incurred thereon have had no discernible benefit to the Column Debtors' estates.

disproportionate burden with regard repayment of the DIP Facility. Without some fair and equitable allocation of the burden of repaying the DIP Facility among the various Prepetition Lenders, Column will be prejudiced and not adequately protected.

37. The only way the Column Liens and Column's interests in the Column Collateral can be adequately protected if the DIP Liens are permitted to prime the Column Liens is if (a) there is a mechanism in place that equitably allocates the burden of repaying the DIP Financing between the various Debtor silos so that the Column Collateral (and any proceeds of the same) bears only a proportionate share of repaying the DIP Financing based on the percentage of the DIP Facility utilized by the Column Debtors (or on some other equitable basis, but in no event based on the timing of the sale of such collateral); (b) to the extent the Column Collateral ends up bearing more than its proportionate share of repaying the DIP Financing, Column is given replacement liens on all of the Debtors other assets that are subordinate only to the DIP Financing and DIP Liens; (c) in addition to the replacement liens contemplated in (b) above, Column is provided adequate protection liens on all of the Debtors' other assets for any diminution suffered by Column in the value of the Column Collateral that are subordinate only to the DIP Liens and the prepetition liens of the other Prepetition Lenders; and (d) the Debtors are required to make monthly payments to Column in an amount equal to the interest accrued on the Prepetition Column Loan and all costs, fees, expenses (including attorneys' fees and expenses) and other charges accrued, accruing, or chargeable under the Column Loan Documents.

38. In sum, the Debtors fail to show that the interests of Column and the other Prepetition Lenders are adequately protected such that their prepetition liens may be primed in favor of the DIP Lender. Rather, the Debtor seeks to impose a DIP Facility upon the Prepetition Lenders which will, in a best-case scenario, lead to a chaotic bankruptcy process in which

Prepetition Lenders jockey to have their collateral liquidated last or, in a worst-case scenario, leave Column holding the bag while the other Prepetition Lenders receive the benefit of the DIP Facility funds to maintain the value of their collateral while bearing none of the risk or burden of repayment.

RESERVATION OF RIGHTS

39. Column expressly reserves its rights to raise any issue properly before the Court at the final hearing on the DIP Financing Motion. Column also expressly reserves its right to further amend or supplement this Supplemental Objection, to introduce evidence supporting this Supplemental Objection at any hearing on the subject matter of this Supplemental Objection, and to file additional and supplemental objections at the conclusion of discovery on such matters, if applicable.

WHEREFORE, Column, as successor in interest to Sector Financial Inc., as administrative agent and collateral agent for the Column Lenders, objects on the limited basis stated above to the relief requested in the DIP Financing Motion as set forth above and reserves its right to raise any additional objections at the hearing on same.

[Signature page follows]

Dated: May 6, 2024
Wilmington, Delaware

Respectfully submitted,

LANDIS RATH & COBB LLP

/s/ Richard S. Cobb
Richard S. Cobb, Esq. (No. 3157)
Joshua B. Brooks, Esq. (No. 6765)
919 Market Street, Suite 1800
Wilmington, Delaware 19801
Telephone: (302) 467-4400
Facsimile: (302) 467-4450
Email: cobb@lrclaw.com
brooks@lrclaw.com

-and-

HOLLAND & KNIGHT LLP

David E. Lemke, Esq. (admitted *pro hac vice*)
Tyler N. Layne, Esq. (admitted *pro hac vice*)
511 Union Street, Suite 2700
Nashville, TN 37219
Telephone: (615) 244-6380
Facsimile: (615) 244-6804
Email: david.lemke@hklaw.com
tyler.layne@hklaw.com

William R. "Trip" Nix, Esq. (admitted *pro hac vice*)
100 Congress Avenue, Suite 1800
Austin, TX 78701
Telephone: (512) 685-6400
Facsimile: (512) 685-6417
Email: trip.nix@hklaw.com

Attorneys for the Column Financial, Inc., as successor in interest to Sector Financial, Inc. as administrative agent for the Column Lenders

EXHIBIT A

Borrowers

Entity Name	State of Formation
SC HEALTHCARE HOLDING, LLC	Delaware
ALEDO RE, LLC	Illinois
ARCOLA RE, LLC	Illinois
ASPEN RE, LLC	Illinois
BEMENT RE, LLC	Illinois
PETERSEN 25, LLC	Illinois
COLLINSVILLE RE, LLC	Illinois
BRADFORD AL RE, LLC	Illinois
BUSHNELL AL RE, LLC	Illinois
SULLIVAN AL RE, LLC	Illinois
WALCOTT AL RE, LLC	Illinois
CYV KEWANEE AL RE, LLC	Illinois
DECATUR RE, LLC	Illinois
EASTVIEW RE, LLC	Illinois
EFFINGHAM RE, LLC	Illinois
HAVANA RE, LLC	Illinois
KEWANEE, LLC	Illinois
LEBANON RE, LLC	Illinois
MCLEANSBORO RE, LLC	Illinois
NORTH AURORA, LLC	Illinois
PETERSEN FARMER CITY, LLC	Illinois
PIPER RE, LLC	Illinois
PLEASANT VIEW RE, LLC	Illinois
PRAIRIE CITY RE, LLC	Illinois
ROBINGS, LLC	Illinois
ROSICLARE RE, LLC	Illinois
ROYAL RE, LLC	Illinois
SHANGRI LA RE, LLC	Illinois
SHELBYVILLE RE, LLC	Illinois
SULLIVAN RE, LLC	Illinois
SWANSEA RE, LLC	Illinois
TARKIO RE, LLC	Illinois
TUSCOLA RE, LLC	Illinois
TWIN RE, LLC	Illinois
VANDALIA RE, LLC	Illinois
WATSEKA RE, LLC	Illinois
WESTSIDE RE, LLC	Illinois

EXHIBIT B

In re LTAP US, LLLP

United States Bankruptcy Court for the District of Delaware

February 18, 2011, Decided

Chapter 11, Case No. 10-14125(KG)

Reporter

2011 Bankr. LEXIS 667 *; 65 Collier Bankr. Cas. 2d (MB) 438

In re LTAP US, LLLP, Debtor.

Counsel: **[*1]** For Debtor and Debtor-in-Possession: Adam G. Landis, Esquire, Kerri K. Mumford, Esquire, LANDIS RATH & COBB LLP, Wilmington, DE.

For Wells Fargo Securities LLC and Wells Fargo Bank, N.A.: Richard W. Riley, Esquire, DUANE MORRIS LLP, Wilmington, DE.

Judges: KEVIN GROSS, U.S.B.J.

Opinion by: KEVIN GROSS

Opinion

Re Dkt. Nos. 5, 36 & 107

MEMORANDUM ORDER[1]

The Court has before it three pending motions, all of which are determinative of the Debtor's reorganization prospects. The principal parties are the Debtor, and Wells Fargo Securities, LLC and Wells Fargo Bank, N.A. ("Wells Fargo"). The motions are: (1) Motion for an Order Authorizing the Debtor's Use of Cash Collateral (the "Cash Collateral Motion") (D.I. 5), (2) Motion of Wells Fargo Securities, LLC and Wells Fargo Bank, **[*2]** N.A. for Relief from the Automatic Stay (the "Lift Stay Motion") (D.I. 36), and Emergency Motion of the Debtor for Post-Petition Secured Financing (the "DIP Motion") (D.I. 107), (collectively, the "Motions", and, as appropriate, the "Debtor's Motions" and the "Wells Fargo Motion"). The parties' requirement for an immediate decision on the Motions will necessitate a summary ruling.

BACKGROUND

Briefly, the Debtor is a Delaware limited liability limited partnership with eight limited partners that are each investment funds organized under German law. It invests in, manages and arranges for the servicing of life insurance policies. It acquires previously issued life insurance policies from policyholders who want to sell their life insurance policies. The industry which deals with such ownership and acquisitions is know as the "Life Settlement Industry." Debtor makes its money from policy maturities (i.e., the deaths of the insureds). Debtor has been facing serious difficulties because it has been unable to sell policies or bundles of policies at a profit and does not have funds to purchase additional policies.

Debtor presently owns 409 policies on 313 lives. Joint Pretrial Stipulation (D.I. **[*3]** 111) ("JPS __") ¶ 3. The aggregate death benefits at the maturities are approximately $1.36 billion. *Id.* Debtor has no other significant assets. The Debtor must maintain the policies by paying the premiums, which it pays on a monthly basis. The Debtor estimates that all of its policies will lapse by March or April, 2011, unless it has the cash to pay the premiums. Debtor presently has less than $9,000 in cash. JPS ¶ 7.

Wells Fargo is Debtor's secured lender under a Loan and Security Agreement, dated June 30, 2008, for the principal sum of $224 million (the "Wells Fargo Agreement"). For the Motions, the parties have agreed that Wells Fargo has valid liens on all of Debtor's assets, including the life insurance policies. JPS ¶ 20. The parties have stipulated that the outstanding amount due as of the petition date was $230,757,674.48. JPS ¶ 18. Debtor claims to have approximately $7.6 million in unsecured debt, much of which is due to insiders.

[1] This Opinion constitutes the findings of fact and conclusions of law pursuant to *Federal Rule of Bankruptcy Procedure 7052*. To the extent any of the following findings of fact are determined to be conclusions of law, they are adopted, and shall be construed and deemed, conclusions of law. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted, and shall be construed and deemed, as findings of fact.

Debtor filed its chapter 11 case on December 22, 2010, after Wells Fargo declared the Wells Fargo Agreement had terminated. The Office of the United States Trustee has not appointed a creditors committee.

The Debtor has reached a critical moment. **[*4]** As of the hearing, premium payments of $9 million were due by February 22, 2011, or Debtor would lose policies with death benefits of approximately $297 million [2]. WFX26. Debtor has virtually no cash with which to make the payment or the premium payments which are coming due soon. Debtor does not presently have any financing, but is seeking such financing through the DIP Motion, whereby Debtor seeks authority to borrow $21,150,000 on an interim basis and a total of $40 million on a final basis from Monarch Alternative Capital LP ("Monarch"). Among other terms of the proposed DIP Loan, Monarch requires its loan to prime Wells Fargo's liens.

DISCUSSION

As the Court will discuss below, whether Debtor is entitled to the relief it seeks in Debtor's Motions, to use cash collateral and to borrow funds from Monarch on a priming basis, depends on the value of its policies, as the value must exceed the balance of Debtor's obligations to Wells Fargo. Similarly, the Lift Stay Motion requires proof that Debtor **[*5]** does not have enough equity in its assets to protect Wells Fargo's liens, again requiring the Court to determine the value of Debtor's assets. Finally, the DIP Motion requires valuation since Monarch would prime Wells Fargo's first lien position by $40 million. The Debtor and Wells Fargo presented expert testimony on valuation which the Court will evaluate in reaching decision on the merits of the Motions. The legal tenets applicable to the Motions are indisputable.

A. The Cash Collateral Motion

Debtor's effort to obtain authority to use cash collateral in the face of Wells Fargo's liens is governed by *Section 363 of the Code*. A debtor may not use cash collateral (defined in *Section 363(a)* as cash and cash equivalents) without consent or court approval. A debtor bears the burden of proving that the secured lender is adequately protected, meaning that there is sufficient value in the secured assets to protect the secured lender. *Section 363(e)*. *See also* *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd., 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988)*.

The facts show that the value of Debtor's assets do not provide Wells Fargo with the required protection against the use of its cash collateral. Even **[*6]** the Court's *rachmunis* (Yiddish: genuine sympathy) must give way to the harsh reality of the evidence. In arriving at its decision the Court places great weight on the analysis by Wells Fargo's expert, Richard Hershman of FTI Consulting. Mr. Hershman conducted a very thorough review of sales and offering price information for 2007 through 2010 and an analysis of the life settlement industry. See WFX 27. Mr. Hershman concluded that the range of value of Debtor's assets is between $123.9 million and $200 million, with a base case value of $156.9 million. The base case carried a discount rate of 28.2%.

Mr. Hershman based his valuation on the conclusion that the "accurate indicator of fair market value in the life settlement market is the average price paid for policies as a percentage of the policies' face value, based on actual market data. . . ." WFX 27 at 9. Mr. Hershman's analyses for his base case, and low value and high value cases, were thorough and supported by detailed market data.

The Debtor established that Mr. Hershman's analysis may be $70 to $80 million low because he did not properly account for brokerage fees and other expenses. While the adjustment would raise the base case **[*7]** value to $232 million, this still does not provide an equity cushion which would protect Wells Fargo. Moreover, the distressed condition of the life settlement industry remains, and particularly the absence of a market for the life policies. Other evidence of the distressed market for Debtor's insurance policies includes an offer in December 2010 to buy Wells Fargo's loan for $160 million which never went forward, an unsuccessful effort by Debtor in August 2010 to sell a portion of the policy holdings, and an effort directed at 27 lenders to refinance Wells Fargo's loan for which the Debtor received no offers. WFX 27 at 11.

Moreover, the Debtor has not met its own projections for maturities, thereby casting doubt over the future prospects for Debtor. Debtor projected 13.5 maturities in 2010, but there were only 5. Debtor's projection of future maturities is similarly unreliable. No, or fewer than,

[2] The parties have alleviated the dire emergency by agreeing that Wells Fargo will advance the payment. Other premiums will soon be due, however, so the resolution of the Motions remains urgent.

projected maturities means continuing losses. While it is true, of course, that all of the policies will eventually mature, Debtor's business model and economic success depends on maturities as projected.

Debtor's expert, R. Larry Warnock of Value Life Corporation, also performed a valuation **[*8]** of Debtor's portfolio of policies and arrived at a value of $269.2 million as of December 31, 2010, and a projected value of $312 Million as of September 30, 2011. DX 30. Mr. Warnock analyzed Debtor's future premiums, life expectancy of the insureds, administrative expenses, projected monthly cash flows and applied discount rates of 17% for premium finance policies and 15% for others to determine net present value. DX 30 at 10. Mr. Warnock also relied on Debtor's projections of maturities, which the Court finds are not reliable. Mr. Warnock does not account for Debtor's inablility to generate positive cash flow, inability to obtain additional financing, the lack of a market to buy the policies and the overall distressed nature of the life settlement industry. Mr. Warnock's work product was thorough, but was hampered by the parameters Debtor set. The Court finds Mr. Hershman's valuation to be more persuasive, and thus values Debtor's assets at $232 million — allowing the $70 million to $80 million correction in full.

The DIP Motion

The DIP Motion and the proposed DIP suffer from the same infirmity as the Cash Collateral Motion, namely, the Debtor has insufficient asset value to allow **[*9]** priming of Wells Fargo's loan. Debtor cannot meet its burden of proving that there is a sufficient equity cushion to allow such a substantial subordination of Wells Fargo's secured first lien on Debtor's assets. Priming is extraordinary relief requiring a strong showing that the loan to be subordinated is adequately protected. *In re Swedeland Development Group, Inc., 16 F.3d 552 (3d Cir. 1994)*. Bankruptcy judges are required to grant *Section 364(d)* financing only upon a tangible demonstration of adequate protection. *Id. at 567*. The Court must be cautious in assuring that Wells Fargo has received genuine adequate protection, and the facts simply do not provide the Court with confidence that the DIP financing protects Wells Fargo's security interest. For instance, the proposal to pay $10 million to reduce Wells Fargo's loan does not negate Wells Fargo's undersecured position. The additional $40 million priming the DIP Motion proposes only makes matters worse. Providing Wells Fargo with a replacement lien on assets against which it already has a lien is illusory. Debtor must provide Wells Fargo with additional collateral, and there is none.

The Lift Stay Motion

Wells Fargo has moved for **[*10]** relief from the automatic stay pursuant to *Sections 362(d)(1)* and *362(d)(2)*, arguing that its collateral will become valueless if premiums are not paid on time, and Debtor does not have the cash to pay the premiums. Additionally, under *Section 362(d)(2)*, and as the Court has already discussed, the Debtor has no equity in the collateral and the collateral is not necessary for a successful reorganization because Debtor is not in a position to reorganize. *In the Matter of MCM, Inc., 95 B.R. 307, 310 (Bankr. D. Del. 1988)*. Debtor does not conduct any form of business except to hold its portfolio of policies, it does not have employees, it has few non-insider unsecured creditors, and it is not able to purchase additional policies as an ongoing business. Most importantly, Debtor lacks equity in the policies and Wells Fargo is entitled to relief from the stay in order to maintain the policies. Under the circumstances, and with substantial premium payments coming due, relief from the stay is mandatory. *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d, 154, 157 (3d Cir. 1993). The continuing immediacy of the premium payment due dates has been eased by the parties' agreement **[*11]** for emergency funding. The Court will therefore not grant Wells Fargo's request for a waiver of the stay period under *Rule 4001(a)(3)*.

CONCLUSION

The Court's decision may be viewed by some as a harsh result, particularly at an early stage of the case. It is clear from the evidence, however, that a wait, watch and hope approach to the case would place Wells Fargo at increasing risk with little or no benefit to Debtor. It has to mean something to be a fully secured lender. The priming DIP financing would mean a deeper debt without a reasonable likelihood of success and would hurt Wells Fargo without helping Debtor. Accordingly, (1) the Cash Collateral Motion is denied, (2) the DIP Motion is denied and (3) the Lift Stay Motion is granted.

SO ORDERED this 18th day of February, 2011.

/s/ Kevin Gross

KEVIN GROSS, U.S.B.J.

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