IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SC HEALTHCARE HOLDING, LLC, *et al.*,	Case No. 24-10443 (TMH)
Debtors. [1]	Jointly Administered

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDER (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, AND (VIII) GRANTING RELATED RELIEF

The official committee of unsecured creditors (the "Committee") of SC Healthcare Holding, LLC and its affiliated debtors and debtors-in-possession (the "Debtors") objects to the *Debtors' Motion For Entry of Interim and Final Order (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, and (VIII) Granting Related Relief* [Docket No. 38] (the "DIP Motion").[2] The Committee objects

[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, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors' proposed claims and noticing agent at www.kccllc.net/Petersen.

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the DIP Motion and Interim DIP Order (as defined below).

to the entry of a Final Order granting the DIP Motion on the terms currently proposed by the Debtors and the DIP Lender. In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee serves as an advocate in these cases for the benefit of all of the Debtors' unsecured creditors. Accordingly, as the Debtors are proceeding with a potential sale of their assets, the Committee's objective is to ensure that a fulsome and fair process is run that will provide the opportunity for general unsecured creditors to receive the greatest recovery available while preserving the value of the Debtors' estates for the benefit of all stakeholders. Since the Committee's formation, the Committee and its professionals have engaged in good faith discussions with the Debtors, the DIP Lender, and their respective professionals to resolve the Committee's concerns and objections regarding the proposed DIP Facility and the Proposed Final Order. Although many of the Committee's concerns have been resolved (subject to final documentation and revisions to the Proposed Final Order), as of the date of this Objection, several issues remain unresolved. The Committee will continue to discuss all remaining issues with the Debtors and the DIP Lender in an effort to reach a consensual resolution prior to the Final Hearing.

2. The Committee is duty-bound to challenge provisions of any proposed DIP financing that are improper or benefit certain stakeholders over others, and is thus compelled to object to such provisions. As set forth herein, the Committee's remaining concerns with the DIP Motion and DIP Facility include:

- **Excessive Fees**. The proposed DIP Facility includes over $4.5 million in fees, including an exorbitant $3.6 million "Exit Fee". The Committee understands that the Exit Fee increased from 4% to 8% (or an additional $1.8 million) due to the temporary subordination of the DIP Facility to the HUD-insured loans during the interim period. Nevertheless, it appears that the Interim Amount of $15 million is

fully secured by the first-priority priming liens on all other DIP Collateral, and the excessive Exit Fee is not warranted.

- **Allocation of Fees and Adequate Protection Claims**. Additionally, it is unclear from the DIP Motion and the Interim DIP Order how the Adequate Protection Claims or the fees under the DIP Facility will be allocated among the Debtors' estates. The Debtors' prepetition corporate and capital structure is complex, with 141 Debtors and multiple prepetition secured lenders, each of whom may have an Adequate Protection Claim against all of the Debtors. Accordingly, the allocation of the DIP fees and Adequate Protection Claims is important to understanding and maximizing value for unsecured creditors.

- **No Waivers of 506(c), 552(b), or Marshaling Rights**. The Court should not grant waivers of the Debtors' section 506(c) surcharge rights, section 552(b) equities of the case exception, or marshaling rights without first assuring that all administrative claims and other costs and expenses of preserving these estates will be paid in full. Additionally, given the complexity of the Debtors' capital structure and prepetition debt, including any third-party, non-Debtor guarantors, marshaling may prove to be particularly consequential to the outcome of these cases for unsecured creditors. At this early stage of the case, the requested waivers are inappropriate and harmful to the estates.

- **No Liens on Avoidance Action Proceeds or Commercial Tort Claims**. Avoidance Actions, commercial tort claims, and their proceeds are property of the estates created by the Debtors' bankruptcy filing and are typically reserved for unsecured creditors. The DIP Lender, which is receiving first-priority priming liens, should not also receive the protections of liens on proceeds of Avoidance Actions or commercial tort claims or access to these proceeds to satisfy superpriority claims, which may be the only material value available for unsecured creditors. Likewise, the Prepetition Secured Parties should not be able to access proceeds of Avoidance Actions or commercial tort claims to satisfy any adequate protection or other claims.

- **Increased Budget for Professional Fees**. The DIP budget includes only $750,000 for the Committee's professionals, compared to $6.5 million for the Debtors' professionals and $1.5 million for the Debtors' prepetition lenders. This is wholly inadequate and impairs the Committee's ability to fulfill its fiduciary duties. The Committee's professional fee allotment should be, at a minimum, at least 50% of the amount budgeted for the Debtors' professionals.

3. The Committee recognizes the Debtors' need for postpetition financing. However, the Committee simply cannot support the proposed DIP Facility, with all downside risk placed on the Debtors' general unsecured creditors, and no meaningful ability for the Committee to maximize value and protect the interests of its constituency. Accordingly, the Court should deny

approval of the DIP Facility as currently proposed. Alternatively, the DIP Facility should be modified as set forth herein.

4. Finally, while the Committee opposes certain aspects of the DIP Motion and DIP Facility as set forth herein, the Committee supports and joins the Debtors' reply in support of the DIP Motion [Docket No. 129] (the "Reply") with respect to the Priming Dispute. To the extent the terms of the DIP Facility are modified to the Committee's satisfaction, the Committee supports the Debtors' ability to prime the HUD Liens and the liens of the non-HUD Lenders (as defined in the Reply), subject to the Debtors otherwise satisfying the adequate protection and other requirements of section 364(d) of the Bankruptcy Code.

BACKGROUND

A. The Debtors' Chapter 11 Cases

5. On March 21, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Case. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses as debtors-in-possession. No trustee or examiner has been appointed in these cases.

6. The Debtors filed the DIP Motion on the Petition Date, seeking interim and final orders (i) authorizing the Debtors to obtain postpetition financing, (ii) authorizing the Debtors to grant security interests and superpriority administrative claims, (iii) granting adequate protection to the Debtors' Prepetition Secured Parties, and (iv) authorizing the non-consensual use of cash collateral, among other relief.

7. On April 9, 2024, the United States Trustee appointed the Committee, which consists of the following members: (i) Select Rehabilitation, LLC.; (ii) Martin Brothers Distributing Company, Inc.; (iii) Omnicare Inc.; (iv) McKesson Corporation; (v) Onestaff Medical, LLC; (vi) Lawrence Recruiting Specialists, Inc.; and (vii) Darlena Moore, as Independent

Administrator of the Estate of Linda I. Johnson. *See Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 131].

8. On April 10, 2024, the Committee selected Greenberg Traurig, LLP as proposed counsel and Province as its proposed financial advisor.

B. Summary of DIP Facility

9. Pursuant to the DIP Motion, the Debtors seek approval of a $45 million postpetition secured facility (the "DIP Facility") provided by JMB Capital Partners Lending, LLC (the "DIP Lender"). $15 million of the DIP Facility is already available to the Debtors under the Court's Interim DIP Order (as defined below), with the remaining DIP Facility to be available following entry of a Final DIP Order. As security, the DIP Lender would receive, among other things, (i) first-priority priming liens on all of the Debtors' assets, subject to the Carve Out and Permitted Prior Liens (each as defined in the DIP Motion), and (ii) superpriority administrative claims, subject to the Carve Out.[3] Additionally, the Committee understands that the priming DIP liens are subject to certain HUD-insured mortgages. (See Interim DIP Order at ¶ 11(c).)

10. In connection with the DIP Facility, the Debtors would also be permitted to grant adequate protection to the Prepetition Secured Parties for any diminution in value of their respective interests in Prepetition Collateral, including (i) replacement liens in the Prepetition Collateral (subordinate to the DIP Liens, Permitted Prior Liens, and the Carve Out), and (ii) superpriority claims, subject and subordinate to the Carve Out and the DIP Superpriority Claims.

[3] Although the Interim DIP Order provides that the DIP liens and superpriority claims will also be subject to the eCapital Obligations, the Committee understands that the eCapital Obligations were satisfied in full in connection with the Interim DIP Order.

11. On March 26, 2024, the Court entered an order approving the DIP Motion and the DIP Facility on an interim basis (the "Interim DIP Order") [Docket No. 97], authorizing the Debtors to borrow up to $15 million under the DIP Facility prior to the final hearing on the DIP Motion, which was initially scheduled for April 23, 2024, and subsequently adjourned to May 13, 2024.

OBJECTION

12. As set forth herein, the proposed DIP Facility and protections requested by the DIP Motion currently include a number of objectionable terms. If the Court is inclined to grant the DIP Motion and approve the DIP Facility on a final basis, the Committee requests that the Debtors, the DIP Lender, and the Prepetition Secured Parties make substantial modifications to the DIP Facility and the Final DIP Order, as outlined herein.

A. The Exit Fee is Excessive and Unnecessary

13. In addition to all DIP Loans bearing interest at 12% per annum, the DIP Facility includes fees of over $4.5 million, including a 2% Commitment Fee and an 8% Exit Fee. These fees are high, particularly where the DIP Lender is being granted first priority priming liens on substantially all of the Debtors' assets as well as superpriority administrative claims. The Committee understands that the Exit Fee was initially proposed to be 4% but was doubled to 8% due to the DIP Facility being subordinated to certain HUD-insured mortgages pending the final hearing on the DIP. In effect, the DIP Lender is charging the Debtors' estates an additional $1.8 million because the Interim Advance is subordinate with respect to a portion of the DIP Collateral. However, it appears that the Interim Advance is nevertheless fully secured by the collateral in which the DIP Lender has a first-priority interest and has suffered no economic loss or additional risk during the interim period that would warrant such a material upward adjustment to its fees. To

the extent the Court approves the DIP Facility on a final basis, the Exit Fee should be reduced substantially.

B. The DIP Motion and DIP Orders Do Not Address the Allocation of Fees and Adequate Protection Claims Among the Debtors' Estates

14. All of the Debtors, as Borrowers under the DIP Facility, will be liable for the fees under the DIP Facility. Likewise, to the extent of any diminution in value of their respective Prepetition Collateral, each of the Prepetition Secured Parties will be provided an Adequate Protection Lien on all of the Debtors' assets (which does not appear to be limited to such Prepetition Secured Party's Prepetition Collateral) and a priority Adequate Protection Claim against all of the Debtors. Neither the DIP Motion nor the Interim DIP Order address how the Adequate Protection Claims (if any) or the fees under the DIP Facility will be allocated among the Debtors' estates. Although the draft of the Proposed Final Order reviewed by the Committee includes additional provisions that purport to provide for allocation of Adequate Protection Claims among the Debtors' estates, the provisions remain ambiguous and will likely lead to further, costly litigation among the Prepetition Secured Parties if and when a Prepetition Secured Party asserts an Adequate Protection Claim. Among other issues, the allocation procedures purport to grant an Adequate Protection Claim to all Prepetition Secured Parties for the aggregate diminution in value of all Prepetition Collateral. Any Adequate Protection Claim granted to a Prepetition Secured Party must be limited to the diminution in value of each Prepetition Secured Party's interest in its respective Prepetition Collateral, and such claims and diminution in value should not be aggregated.

15. The Debtors' prepetition corporate and capital structure is complex, with 141 Debtors and multiple prepetition secured lenders. Though the Committee was only recently appointed and is still gathering and reviewing information concerning the Debtors, it does not

appear that these cases will be substantively consolidated. Accordingly, the allocation of the DIP fees and Adequate Protection Claims is important to understanding and maximizing value for unsecured creditors, particularly where the Prepetition Secured Parties are being granted "replacement" liens on assets of Debtors against whom they did not previously have a claim.

C. The Budget for the Committee's Professional Fees Is Inadequate and Curtails the Committee's Ability to Fulfill its Fiduciary Duties

16. The DIP budget includes only $750,000 (including a mere $200,000 for the first three months of the case) for the Committee's professional fees, compared to $6.6 million for the Debtors' professionals and $1.5 million for the Debtors' secured creditors. The budget for the Committee is wholly inadequate. The amount budgeted for the Committee's professionals must be proportionate to the amount budgeted for the Debtors' professionals to ensure the Committee is adequately equipped to fulfill its fiduciary role. *See In re Channel Master Holdings, Inc.*, 2004 Bankr. LEXIS 576, at *8–9 (Bankr. D. Del. Apr. 26, 2004) (holding cap on official committee's professional fees under DIP facility was unreasonable relative to larger budgets for other professionals in case and determining cap on the committee's fees provided for inadequate compensation). The great disparity in compensation between the Committee's professionals, on the one hand, and the Debtors' professionals and secured creditors, on the other hand, as contemplated in the proposed professional fees budget would not only limit the Committee's ability to fulfill its fiduciary duties, but also materially impair the Debtors' unsecured creditors in their ability to protect and exercise their rights in these cases. To ensure that the Debtors and the Committee have equal access to quality professionals, the funds allotted to the Committee's professionals for the payment of their fees and expenses should, at a minimum, amount to at least 50% of the funds budgeted for the Debtors' professionals.

D. The Proposed Waivers of Sections 506(c), 552(b), and Marshalling Rights Are Inappropriate.

17. The Debtors propose to waive several critical rights, including (i) the estates' right to surcharge Prepetition Collateral and DIP Collateral under section 506(c) of the Bankruptcy Code, (ii) the statutory right to apply the "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (iii) the doctrine of marshaling. These waivers are inappropriate and harmful to the estates.

i. The Debtors' Section 506(c) Rights Must Be Preserved

18. Congress' intent in enacting section 506(c) was to ensure that the debtor in possession would be entitled to recover expenses from its secured lender to the extent that those expenses are necessary and reasonably associated with preserving or disposing of the lender's collateral. *Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Industries, Inc)*., 57 F.3d 321, 325-26 (3d Cir. 1995) (discussing Congressional Record, 124 Cong.Rec. 32,398 (Sept. 28, 1978) (statement of Rep. Edwards)). Section 506(c) is thus designed to prevent "a windfall to the secured creditor at the expense of the claimant." *Id.* (citing *IRS v. Boatmen's First Nat'l Bank of Kansas City*, 5 F.3d 1157, 1159 (8th Cir. 1993)).

19. Here, there is no justification for a preemptive waiver of section 506(c). The Committee was only recently appointed, and the Committee's financial advisor is still evaluating the budgets and needs additional information from the Debtors. In the interim, it would be inappropriate to waive the Debtors' surcharge rights, particularly where the DIP Facility is priming the Debtors' prepetition secured debt, thereby already reducing the value that could otherwise be available to satisfy administrative costs. Waiving their section 506(c) surcharge rights poses a risk to the Debtors' estates that the costs of preserving the Prepetition Collateral and DIP Collateral may ultimately be borne by unsecured creditors. Accordingly, the estates' right to surcharge

collateral under section 506(c) should be decided on a case-by-case basis and should not be waived in a blanket fashion at the inception of these cases.

ii. Waiver of the Section 552(b) Equities of the Case Exception Is Inappropriate

20. Section 552(b) of the Bankruptcy Code allows a court to refuse, based on the equities of a case, to extend a prepetition lien to postpetition "proceeds, products, offspring or profits" of prepetition collateral. 11 U.S.C. § 552(b)(1). "The purpose of the equity exception is to prevent a secured creditor from reaping benefits from collateral that has appreciated in value as a result of the trustees/debtor-in-possessions use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value." *In re Muma Servs.*, 322 B.R. 541, 558-59 (Bankr. D. Del. 2005) (citation omitted); *see also Nanuet Nat'l Bank v. Photo Promotion Assocs., Inc. (In re Photo Promotion Assocs., Inc.)*, 61 B.R. 936, 939 (Bankr. S.D.N.Y. 2000).

21. For the same reasons that a section 506(c) waiver is inappropriate, the Debtors should not be permitted to waive their rights under section 552(b) given the uncertainty that all administrative claims will be paid. The Committee is not requesting a prospective application of the "equities of the case" exception, but merely requests that the Court preserve the right to seek, and for the Court to make, a determination as to whether such exception applies at a later time. Granting a section 552(b) waiver at the outset of these proceedings would unfairly prejudice unsecured creditors and deprive the estates of important statutory rights that could yield value for all stakeholders.

iii. The Estate's Marshaling Rights Should Not Be Waived

22. Marshaling requires a "senior secured creditor to first collect its debt against the collateral other than that in which the junior secured creditor holds an interest, thereby leaving that collateral for the junior secured creditor's benefit." *Simon & Schuster, Inc. v. Advanced Mktg.*

Servs., Inc. (In re Advanced Marketing Servs., Inc.), 360 B.R. 421, 427 n.8 (Bankr. D. Del. 2007). Marshaling "prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." *Meyer v. United States*, 375 U.S. 233, 237 (1963). Marshaling can be pursued by the Committee for the benefit of unsecured creditors. *See, e.g., Official Comm. of Unsecured Creditors of America's Hobby Ctr., Inc. v. Hudson United Bank (In re America's Hobby Ctr., Inc.)*, 223 B.R. 275, 287 (Bankr. S.D.N.Y. 1998) ("Because a debtor in possession has all the rights and powers of a trustee . . . [the Committee] standing in the shoes of the debtor in possession . . . can assert this [marshaling] claim.").

23. For the same reasons that section 506(c) and 552(b) waivers are inappropriate, the Court should reject any limit to the marshaling doctrine. Additionally, given the complexity of the Debtors' prepetition debt structure, including any third-party, non-Debtor guarantors, marshaling may prove to be particularly consequential to the outcome of these cases for unsecured creditors. At this early stage of the case, the requested waivers are inappropriate and harmful to the estates.

E. The DIP Collateral Should Not Include Liens on Avoidance Action Proceeds, Commercial Tort Claims, Nor Should Superpriority Claims be Paid from Such Proceeds

24. Avoidance actions are distinct creatures of bankruptcy law designed to benefit and ensure equality of distribution among general unsecured creditors. *See Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 244 (3d Cir. 2000), *rev'd en banc*, 330 F.3d 548 (3d Cir. 2003) (identifying underlying intent of avoidance powers to recover valuable assets for the estate's benefit); *In re Tribune Co.*, 464 B.R. 126, 171 (Bankr. D. Del. 2011) (noting "that case law permits all unsecured creditors to benefit from avoidance action recoveries."); *see also Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm L.P. IV*, 229 F.3d 245, 250 (3d Cir. 2000) (stating that "any recovery [under

avoidance powers] is for the benefit of all unsecured creditors, including those who individually had no right to avoid the transfer"). Commercial tort claims are unencumbered assets.

25. The Debtors have not provided any justification for granting liens on, or paying superpriority claims from, proceeds of Avoidance Action or commercial tort claims. Keeping the proceeds of Avoidance Actions and commercial tort claims available for unsecured creditors is critical here where the Debtors appear to have few unencumbered assets, are granting the DIP Lender priming liens on already encumbered assets, and the value of Avoidance Actions and commercial tort claims has not been determined. It would be inequitable to allow the Debtors to administer these chapter 11 cases for the sole benefit of the Debtors' myriad secured creditors and potentially claw back prepetition payments to trade creditors for the benefit of the DIP Lender.

F. The Liens of the Prepetition Secured Parties, including the HUD Liens, may be Primed

26. While the Committee opposes certain aspects of the DIP Motion and DIP Facility as set forth herein, the Committee supports and joins the Debtors' Reply regarding the Priming Dispute and in support of the DIP Motion. To the extent the terms of the DIP Financing are modified to the satisfaction of the Committee, the Committee supports the Debtors' ability to prime the HUD Liens (and the liens of the non-HUD Lenders),[4] subject to the Debtors otherwise satisfying the adequate protection and other requirements of section 364(d) of the Bankruptcy Code.

27. In expressing an absolute prohibition on the priming of the HUD Liens, the Objecting HUD Lenders would effectively seek to deny the Debtors an ability to reorganize in Chapter 11. Worse, the Objecting HUD Lenders take this maximalist position not upon reliance

[4] Capitalized terms used in this section and not otherwise defined herein shall have the meaning ascribed to them in the Reply.

of binding case law, but by citation to federal regulations and reference to the NHA. In doing so, however, the Objecting HUD Lenders not only ignore decades of bankruptcy policy and principles of statutory interpretation, but also disregard persuasive case law reflecting circumstances in which allegedly "non-primable" HUD loans have in fact been primed. *See Reply*, at ¶¶ 4-6, 13-15.

28. The public policy arguments advanced by the Objecting HUD Lenders are equally unavailing. First, in these Chapter 11 Cases, HUD's financial interests as a creditor are being implicated rather than their interests as a federal regulator. Second, in the unlikely event that the Court were to deem HUD as acting in these Chapter 11 Cases in its capacity as a regulator advancing public policy interests, then the Court would need to balance the competing bankruptcy and federal housing interests. *See In re Cap. W. Invs*., 186 B.R. 497, 499 (N.D. Cal. 1995) ("When confronted with two different statutory schemes, the court must attempt to harmonize the goals and policies of each.") (citing *Nat'l Lab Rels. Bd. v. Bildisco*, 465 U.S. 513 (1984)). Considering the impact on the Debtors' bankruptcy estates if priming of the HUD Liens is proscribed—the very real risk that a restructuring may not be feasible, jobs will be lost, and elderly resident lives will be placed at risk—the equities inescapably favor the Debtors. Finally, even in the face of strong HUD public policy considerations, the forceful public policy objectives in seeing the Debtors' healthcare businesses reorganize, the residents being assured of a safe and successful transition to new ownership and as many jobs as possible being preserved in an orderly manner are at least equal if not greater public policy drivers.

29. Given that there is no blanket prohibition on priming the HUD Liens, the Debtors may prime those liens upon a showing under section 364(d) of the Bankruptcy Code. The Debtors can satisfy that burden here where each Prepetition Secured Lender has an equity cushion in the collateral securing that secured creditors' lien such that their interests are being adequately

protected.[5] *See* Valuation Declaration. Moreover, other than conjecture otherwise, none of the Objecting Lenders has produced any evidence or pointed to any reliable facts to rebut the Valuation Declaration and the strong adequate protection showing of the Debtors. For these reasons, and so long as the DIP Facility is modified to account for the objectionable features highlighted herein by the Committee, the Committee supports the Debtors' pursuit of priming DIP financing in these Chapter 11 Cases.

RESERVATION OF RIGHTS

30. The Committee will continue to work in good faith with the Debtors and DIP Lender to resolve the Committee's objections to the DIP Motion and the DIP Facility prior to the final hearing. The Committee reserves all rights with respect to the proposed DIP Facility and DIP Documents (including, without limitation, any Final Order) and expressly reserves and preserves all rights to raise any additional objections to the relief requested in the DIP Motion or in connection with the proposed DIP Facility at or prior to any final hearing.

[5] As set forth in the DIP Motion, this is further supported by the willingness of several of the Prepetition Secured Lenders to the Debtors' entry into a priming DIP facility. *See* DIP Motion, at ¶ 29.

Dated: May 9, 2024
Wilmington, Delaware

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Anthony W. Clark (DE Bar No. 2051)
Dennis A. Meloro (DE Bar No. 4435)
222 Delaware Avenue, Suite 1600
Wilmington, Delaware 19801
Tel: (302) 661-7000
anthony.clark@gtlaw.com
dennis.meloro@gtlaw.com

-and-

Nancy A. Peterman (*admitted pro hac vice*)
Danny Duerdoth (*admitted pro hac vice*)
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
Tel: (312) 456-8400
petermann@gtlaw.com
duerdothd@gtlaw.com

-and-

Shari L. Heyen (*admitted pro hac vice*)
1000 Louisiana Street, Suite 6700
Houston, TX 77002
Tel: (713) 374-3500
shari.heyen@gtlaw.com

Proposed Counsel to the Official Committee of Unsecured Creditors