

1 IN THE UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

3 In Re: .
4 LAVIE CARE CENTERS, LLC, et al., . Docket No. 24-55507-pmb
5 Debtors. .
6 Atlanta, GA
7 July 24, 2024
8 LAVIE CARE CENTERS, LLC, et al., . 9:44 AM
9 Plaintiffs, . Adv. Proc. 24-05127-pmb
10 -against- .
11 HEALTHCARE NEGLIGENCE .
12 SETTLEMENT RECOVERY CORP. LLC, .
13 Defendant. .
14

13 TRANSCRIPT OF HEARING
14 BEFORE THE HONORABLE PAUL M. BAISIER
15 UNITED STATES BANKRUPTCY COURT
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1 Debtors' motion filed at adversary docket number 2 for an
2 order extending the automatic stay and/or preliminarily
3 enjoining the claims and causes of action

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25 Transcribed by: River Wolfe



1 APPEARANCES:

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18 Also Present: M. Benjamin Jones
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I N D E X

EXHIBITS:

| No. | Description | Marked | Admitted |
|-----------|----------------------------------|--------|----------|
| DEBTORS': | | | |
| -- | Declaration of M. Benjamin Jones | | 9 |

RULINGS:

| | PAGE | LINE |
|--|------|------|
| Debtors' motion to enjoin claims is granted in part, subject to modifications as noted on the record | 60 | 19 |



Colloquy

1 THE CLERK: The court will come to order.

2 Good morning, Your Honor. Today is July 24, 2024,
3 and the time is now 9:44 a.m. We are here for the omnibus
4 hybrid hearing for the case number 24-55507, LaVie Care
5 Centers, LLC, et al., and the specially set hybrid hearing in
6 adversary proceeding 24-5127, LaVie Care Centers, LLC, et al.
7 v. Healthcare Negligence Settlement Recovery Corp.

8 There were two items on the Court's calendar this
9 morning for Your Honor to consider. However, pursuant to the
10 third amended and restated general order 24 2018, an order was
11 entered on July 22nd, 2024, granting consolidated case docket
12 number 140, which was the debtors' motion for entry of order,
13 one, authorizing employment and payment of professionals used
14 in the ordinary course of business, and two, granting related
15 relief.

16 That only leaves one matter for the Court to consider
17 this morning. That item is number 1 on the court's agenda,
18 the stay extension motion at docket number 2 in the adversary
19 proceedings case.

20 THE COURT: And with that, Mr. Simon.

21 MR. SIMON: Good morning, Your Honor. Again, Dan
22 Simon, McDermott Will & Emery, on behalf of the debtors. I'm
23 joined today at counsel table with Mr. Nathan Bull, my
24 litigation partner. And we're also joined today again by Mr.
25 Benjamin Jones, the debtors' chief restructuring officer from



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1 Ankura Consulting.

2 There is only the one item on the agenda on the
3 adversary. But with Your Honor's permission, I'd like to just
4 provide a few brief status updates, and then Mr. Bull will be
5 handling much of the matter on the agenda.

6 THE COURT: Okay. That'd be fine.

7 MR. SIMON: First and foremost, last week the debtors
8 completed the filing of schedules and statements. 282
9 schedules and statements now on the docket. It was, as you
10 can imagine, quite a momentous effort. That was a joint
11 effort, really, between the Synergy team as well as Ankura
12 Consulting, with a little assistance from McDermott. But we
13 appreciate the efforts.

14 And Mr. Adams is in the courtroom. And there is a
15 continued 341 meeting set for August 12th, where we'll be
16 working through the debtors' schedules and statements. And I
17 think that will be an all-day affair.

18 Second status update is that the sale process being
19 run by Stout is well underway. As of today, Stout has reached
20 out to approximately 145 potential buyers, of which 29 have
21 signed the NDA and have received a confidential information
22 memorandum. A number of those are active in Stout's data
23 room. And as Your Honor may recall, the bidding procedures
24 entered, set a bid deadline of September 6th, an auction date
25 of September 9th, and a proposed sale hearing date of



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1 September 11th. And just last night, we did file a notice of
2 potential contracts, kind of cure amounts, that was required
3 under the bidding procedures.

4 And then third and finally, last night, the debtors
5 did file a combined plan and disclosure statement. If you
6 recall from the first day of the case, the debtors had a
7 milestone in their DIP financing to allow forty-five days for
8 the filing. That was actually last week. We sought an
9 extension from the DIP lenders and filed it yesterday.

10 And I'll just note for the Court that the plan is
11 effectively acting as a template and a starting point for all
12 the parties to review and digest and comment on. We view it
13 as an iterative process. And as the sale process unfolds, the
14 document will continue to evolve. The Bankruptcy Code
15 provides for twenty-eight days' notice for a disclosure
16 statement hearing.

17 We recognize the importance of building in the sale
18 process into that. We have a sale hearing date scheduled for
19 September 11th, which is actually fifty days from the filing.
20 And we would look to notice the disclosure statement hearing
21 that far in advance for September 11th, which will kind of
22 coincide with the sale process.

23 And so those are the primary updates for today. So
24 unless Your Honor has any questions, we could probably turn to
25 the agenda.



Colloquy

1 THE COURT: I don't, so please proceed.

2 MR. SIMON: Okay. The only item on the agenda for
3 today is the adversary -- is the debtors' motion filed at
4 adversary docket number 2 for an order extending the automatic
5 stay and/or preliminarily enjoining the claims and causes of
6 action. I think we'll probably be referring to either the
7 Florida action or the Miami action, but they're the action
8 that's currently pending with respect to Healthcare Negligence
9 Settlement Recovery Corp.

10 My partner Mr. Bull will be addressing the Court with
11 respect to the legal arguments. But before we get there, we
12 did confer with Mr. Anthony as counsel regarding evidence and
13 testimony. Our complaint, which was filed at docket number 1,
14 attached a declaration of Mr. Jones.

15 Mr. Anthony and the parties have agreed to stipulate
16 to the introduction of that declaration of Mr. Jones, which
17 itself has a number of exhibits, I think five exhibits, one of
18 which is the complaint in the underlying matter, as well as
19 the various documents referenced in the Jones declaration,
20 such as the support services agreement, the administrative
21 services agreement, the LaVie Care Centers operating
22 agreement, and then a sample operations transfer agreement.

23 So I think we have agreement with Mr. Anthony on
24 streamlining today's hearing and a stipulation to the
25 introduction of Mr. Jones' declaration into evidence,



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1 including those supporting documents, and that no additional
2 live testimony or cross-examine of Mr. Jones or any other
3 party would be necessary, unless Your Honor has any questions
4 for Mr. Jones. So with that representation on the record, we
5 would seek to introduce the evidence -- introduce into
6 evidence Mr. Jones's declaration, including the exhibits that
7 are attached to that declaration.

8 THE COURT: All right. Mr. Anthony.

9 MR. ANTHONY: Yeah, counsel has correctly stated the
10 stipulation.

11 THE COURT: You want to state your name for the
12 record? We only have an audio record so --

13 MR. ANTHONY: John Anthony, Anthony & Partners, for
14 the defendant.

15 THE COURT: Okay. And so with that agreement, the
16 declaration is admitted.

17 (Declaration of M. Benjamin Jones was hereby received
18 into evidence as Debtors' Exhibit --, as of this date.)

19 MR. SIMON: Thank you, Your Honor. And with that, I
20 will turn the podium over to Mr. Bull.

21 MR. BULL: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. BULL: Nathan Bull from McDermott Will & Emery
24 for the debtors. And I'd like to thank Your Honor for hearing
25 this on an expedited basis.



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1 I'd like to start with a brief overview of the
2 Florida action, which is overwhelmingly about the conduct of
3 the debtors. Recovery Corp. says it pooled together claims
4 from ninety-seven tort plaintiffs against the debtors and
5 nondebtors. The tort plaintiffs' claims were for alleged
6 negligence of the debtors' nursing home facilities. The
7 debtors entered into structured settlements to settle those
8 claims. And at some point over 2023 and 2024, they stopped
9 making those payments because they were unable to do so.

10 Recovery Corp. now asserts claims against forty-nine
11 debtors and just nine nondebtors, seeking about 8.7 million in
12 missed settlement payments. The nondebtors include Mr. Dan
13 Diaz, who was a lawyer that defended the debtors in the
14 negligence cases, operators of the facilities, including
15 Aspire and Inspire, and Synergy, which provides administrative
16 services to the debtors and operators.

17 Recovery Corp. claims that the debtors defaulted on
18 the settlements intentionally and moved assets beyond the
19 reach of plaintiffs. The claims include fraudulent
20 conveyance, successor liability, veil piercing, and breach of
21 fiduciary duty. We, of course, dispute these claims.

22 But the common thread here is they all concern the
23 conduct of the debtors. The debtors' alleged negligence in
24 the nursing homes. The debtors' failure to make settlement
25 payments. The debtors' alleged fraudulent conveyances.



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1 There's simply no way to extricate the debtors from these
2 cases. Any claims that proceed will necessarily implicate the
3 debtors and force them to be involved.

4 So moving to the legal basis for the stay, we think
5 there's three grounds, the first two of which are under the
6 automatic stay provision 362, including 362(a)(3), which stays
7 claims that belong to the debtors, and 362(a)(1), which stays
8 claims against the debtors, here under the theory that the
9 debtor is the real party defendant for claims against the
10 nondebtors. And the third basis is 105(a), which gives the
11 Court the equitable power to issue any order necessary for the
12 Chapter 11 cases. The first two -- the first two grounds, the
13 automatic stay, we believe do not require an injunction but
14 can be done by a declaration that the stay applies because the
15 automatic stay is self-executing.

16 So starting with claims that belong to the debtors'
17 estate, that includes fraudulent transfer, successor
18 liability, de facto merger, veil piercing, and breach of
19 fiduciary duty. These are quintessential estate claims.
20 These are claims that are generalized and don't have any
21 particularized harm to any creditor. They're in the heartland
22 of claims that belong to the estate.

23 Recovery Corp. doesn't contest this. It concedes it.
24 In paragraph 23 on its objection, Recovery Corp. says,
25 "Standing to assert these causes of action is typically



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1 afforded only to the trustee or the debtor-in-possession."

2 They concede it.

3 And then they make the argument that they should have
4 derivative standing to pursue these claims. Without getting
5 into the substance of derivative standing of that argument,
6 which we don't think is relevant here, but I imagine we
7 disagree with it, a derivative case, of course, is brought on
8 behalf of the company. It belongs to the company. So by
9 arguing it has derivative standing, Recovery Corp. is again
10 conceding the claims belong to the estate. And therefore
11 they're subject to the automatic stay, and they should be
12 stayed.

13 Turning to claims against the debtors, we think that
14 includes unfair trade practices, civil conspiracy, and unjust
15 enrichment. And Recovery Corp. is correct that 362(a)(1) only
16 applies to nondebtors in unusual circumstances. But we cite
17 to case law in our brief and reply that finds those unusual
18 circumstances exist where the debtor is actually the real
19 party defendant, such that a judgment against the other
20 defendant would, in effect, be a judgment against the debtor.

21 And this applies here for two reasons that have been
22 recognized by courts. First, the claims against the debtors
23 and the nondebtors are inextricably intertwined so that a
24 judgment against the nondebtors will have a preclusive effect
25 against the debtors. And second, the debtors have



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1 indemnification obligations to the nondebtors. They will bear
2 responsibility for fees and judgments incurred.

3 Taking the first basis, the claims here are so
4 intertwined that if they proceed, the debtors have to get
5 involved. The claims depend on adverse findings against the
6 debtors. This is a case brought against the debtors for the
7 debtors' default on settlement obligations. Without the
8 debtors' defaults, there would be no Florida action.

9 Recovery Corp. doesn't address this basis in its
10 objection. It hasn't explained how it can pursue its case
11 against the nondebtors without implicating the debtors. And
12 that's because it can't be done. It's not feasible. So for
13 this reason alone, those claims should be stayed.

14 And taking the second basis, the claims are stayed
15 due to the indemnification obligations. And we cite to cases
16 in our brief that indemnification obligations are a classic
17 example of a real party defendant's situation that warrants
18 enforcement of the automatic stay. And these obligations are
19 pursuant to agreements attached to the Jones declaration.

20 They covered third-party claims relating to the
21 operations of the debtors' facilities and claims against the
22 indemnified representatives of the debtors in that capacity.
23 These indemnities cover the claims brought by Recovery Corp.
24 If there is an adverse judgment, that may well be the
25 responsibility of the debtors. Even if there's not an adverse



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1 judgment, the legal fees incurred defending the claim will be
2 an obligation of the debtors.

3 Recovery Corp. doesn't contest the application of the
4 provisions, whether to the claims or to the nondebtors in
5 their capacities as agents and managers of the debtors. What
6 they say is the obligations are not definitive, and they point
7 to what they call limitations or conditions precedent. The
8 limitations are typical carve-outs for willful misconduct and
9 fraud. The condition precedent is a typical notice
10 requirement, which also says failure to give notice does not
11 relieve the indemnitor of its obligations. Okay. There's
12 nothing in the case law that says these limitations undermine
13 the application of a automatic stay.

14 What the cases talk about are potential claims for
15 indemnification, and indemnification obligations that may be
16 ultimately unsuccessful because even those claims will have
17 adverse economic consequences for the debtors. If Recovery
18 Corp. is right, any indemnification obligation would have to
19 be fully litigated. No court has said that in this context.

20 And the final ground we rely on is for the Court to
21 exercise its equitable powers under 105(a) and issue an
22 injunction. And as the Court knows, 105(a) provides it with
23 the power to issue any order, process, or judgment that is
24 necessary or appropriate. I won't belabor the factors of the
25 PI because I think they're largely duplicative of the other



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1 arguments. But I'll note for irreparable harm, we submitted
2 the declaration for Mr. Jones, and he explained that the
3 continued prosecution of these claims will deplete the
4 estate's resources and distract the debtors' personnel and
5 professionals.

6 For its part, Recovery Corp. has introduced no
7 evidence that any harm will come its way but that this harm
8 won't occur to the debtors. To the contrary, as I suspect Mr.
9 Anthony will tell you, he said he has intend to move the case
10 forward. So Recovery Corp. is conceding that the balance of
11 equities tips towards the debtors, and it will suffer no harm
12 from a stay.

13 So if Your Honor has any questions, I'm happy to take
14 them. Otherwise, I'll turn it to Mr. Anthony.

15 THE COURT: I do not. That seems like a summary of
16 the pleadings I've already read, but thank you.

17 MR. BULL: Thank you.

18 MR. ANTHONY: Morning again, Your Honor. John
19 Anthony for the defendant, Healthcare Negligence Settlement
20 Recovery Corp.

21 THE COURT: You're actually the plaintiff, I guess.
22 But I guess you're the defendant in this case, and the
23 plaintiff in the other case.

24 MR. ANTHONY: We're the defendant in this case. In
25 Miami, we're the plaintiff, which is --



Colloquy

1 THE COURT: Makes it confusing.

2 MR. ANTHONY: -- where we might likely wish to go
3 back to at some time soon.

4 Your Honor, the scheduling of this on an expedited
5 basis was unnecessary. I appreciate the time, though, because
6 it allows us to vet the issues that really have underlaid this
7 case and how we got here. We want to talk a little bit about
8 how we got here, the Miami case, why this adversary proceeding
9 was filed when we said three months ago on the petition date
10 that we would not take further action without either going to
11 the Court or getting consent from the creditors committee and
12 the debtors. And then we want to talk about this motion.

13 THE COURT: Let me ask you something. If that's
14 your -- if that's your concession or what you say, and I think
15 you said that in your papers, too, then I'm a little mystified
16 about why you're opposing this motion.

17 MR. ANTHONY: Well, Your Honor, we're opposing the
18 motion because we're not conceding anything on the facts, and
19 we don't think you can get there on 65(d) with respect to the
20 findings of fact and conclusions of law. And I think it's
21 because there's so much that hasn't been said to Your Honor
22 about these debtors, these 282 debtors, and the 101 claimants,
23 victims, in Florida who I've come to represent.

24 So it I understand a business case. Sometimes, there
25 isn't as much focus on the product or the service that's being



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1 offered. But Healthcare Negligence was created because of
2 many hundreds of victims out there of these consulate nursing
3 homes. They're Legacy Consulate (ph.), which is a bankruptcy
4 case from 2021 that was filed because of a qui tam claim that
5 was extraordinarily large, nine-figure claim, and obviously
6 horrible service of patients and residents in nursing homes.

7 Ultimately, a business entity called Synergy emerged
8 from that. And several subs were created, and one of them was
9 this debtor. And this debtor had many, many subs of their
10 own, many of them in Florida. And Mr. Dan Diaz, an attorney
11 in Florida, defended many of those lawsuits with the seventeen
12 law firms that I work with.

13 And Mr. Diaz negotiated settlement agreements, timed
14 agreements, last year that all went into default fairly
15 predictably in what seems to be an orchestrated way, after
16 saying to the various plaintiffs' lawyers in Florida that
17 we're going to be able to make these payments. We know that
18 we did something wrong. We stipulate that we owe the money.
19 So ten-and-a-half million dollars' worth of settlements were
20 supposed to be paid over time. Instead what happened was the
21 entire matrix of business entities was effectively booby
22 trapped.

23 Now, by March of this year, the lawyers, the
24 plaintiffs' lawyers that I work with and represent, had
25 figured out that of the sixty-seven counties in Florida, there



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1 were cases all over the place with consulate entities being
2 sued, with consulate entities defaulting under agreements, and
3 we tried to figure out what are we going to do. We're not
4 going to go from county to county to county holding Dan Diaz
5 responsible for all of that. But we looked up and realized
6 that he was a principal or director of some of these
7 companies, even the transferees.

8 So a business entity was formed in order to bring a
9 specialty piece of litigation in Miami. There are four
10 specialty courts, complex business divisions, out of all
11 sixty-seven counties in Florida. One of them is in Miami,
12 which is where we brought the case.

13 We effectuated service. Everybody was served.
14 Discovery was sent out. Mr. Simon pre-petition appeared for
15 the debtors, who we've named, forty-nine of them. And then a
16 lawyer in Mr. Diaz's office appeared for the remaining ones,
17 including three of these companies that are parents of
18 transferees. Now, Synergy, it used to be called Consulate.
19 It is actually the parent of two business entities that, as
20 far as we know, are parents of transferees.

21 So Your Honor has heard these terms, a SNF, a skilled
22 nursing facility. And you've also heard of opcos. We have
23 forty-three opcos. And we have the rest of them, besides
24 LaVie, the parent, are divestcos, which we call that
25 transferors under the Uniform Fraudulent Transfer Act to the

Colloquy

1 extent that we're bringing claims like that.

2 So when we brought our lawsuit, we had limited
3 information in April of 2022. We didn't know everything that
4 we know now, three months later. But we brought five counts
5 that are either under the UFTA, Uniform Fraudulent Transfer
6 Act, or as noted, mere continuation, de facto merger, and veil
7 piercing.

8 And Your Honor, I do want to skip to the chase. It's
9 true. We understand the concept of 544(b) and 541(a) and the
10 augmented estate and how those claims normally switch hands in
11 connection with the filing of a Chapter 11.

12 THE COURT: Right. They belong to the debtors. And
13 in this case, we have a creditors committee, who is, among
14 other things, investigating those kinds of claims.

15 MR. ANTHONY: Right.

16 THE COURT: And your client's on the creditors
17 committee.

18 MR. ANTHONY: Right. And Your Honor, that's one of
19 the reasons why this was a complete nonemergency is because as
20 we wait, we're not waiting to kick the can down the road.
21 We're waiting to figure out what to do next. The case that we
22 commenced also had four other counts that are not -- that do
23 not fall into that category, the Uniform Deceptive and Unfair
24 Trade Practices Act claim, the civil conspiracy claim, the
25 breach of fiduciary duty claim against Mr. Diaz, and the



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1 unjust enrichment claim. These are against nondebtors. And
2 we don't think there's any doubt that those could be brought.
3 Now --

4 THE COURT: Right. But doesn't the breach of
5 fiduciary duty claim belong to the debtors? And you're
6 seeking to enforce it as a creditor. And so they haven't
7 not -- they haven't not enforced it.

8 MR. ANTHONY: Your Honor, the breach of fiduciary
9 duty claim, to the extent that we have, Mr. Diaz directly as
10 counsel for the defendants in the various, those 101, PI
11 cases, nursing home negligence cases, saying while he's a
12 member of the board of the transferee, while he's negotiating
13 with someone who's undisputedly a creditor, he personally had
14 a duty to be honest about what was going on, and he breached
15 that duty.

16 So this is not a garden-variety breach of fiduciary
17 duty D&O-type claim. Now, it may be covered that way, but
18 what we're saying is that Mr. Diaz lied to seventeen lawyers
19 who I work with closely, who I've talked to, and said, okay,
20 we understand that that's a separate claim. And the same
21 thing with these parent entities.

22 THE COURT: And he had a fiduciary duty to them?

23 MR. ANTHONY: I'm sorry, Your Honor.

24 THE COURT: He had a fiduciary duty to them?

25 MR. ANTHONY: In the State of Florida, a director of



Colloquy

1 a company, an officer of a company has a duty to equity for so
2 long as the business entity is solvent and to creditors for so
3 long as when it becomes insolvent, and to make an express
4 representation to the lawyers when negotiating, saying, we
5 know we owe you money. We're going to agree, and you're going
6 to get time payments. While at the same time, he's arranging
7 the transfers in question.

8 Now, Your Honor, this is not a garden-variety case.
9 What happened, and we now know what happened, a lot more. In
10 fact, one of the reasons that we have said we're not going to
11 take -- it's not a concession. It's not an admission. We
12 don't know what motion to file because the bankruptcy
13 schedules were filed over the last several days. The plan was
14 apparently filed while I was driving up here. And we have the
15 creditors committee looking at these issues.

16 So the question really is what will the next step be,
17 and we certainly don't believe that that where we are, there
18 is a basis for granting relief. Now, I will say that there
19 may be a basis for a stay. And cutting to the chase, we
20 certainly would like to have this hearing continued a couple
21 of weeks down the road. I think the next hearing is August
22 13th.

23 But let's take a look at what's really going on here.
24 Your Honor has a motion that was filed on the first couple of
25 days of the case for 364 and another for 363 relief. And both



Colloquy

1 of them contemplate the release of claims that belong to my
2 debtors.

3 Now, let's take a look at the divestco issue. There
4 are no claims of the kind that my clients have that are in the
5 hands of an operating company. So anybody who wants to bid on
6 an operating company in connection with a 363 sale does not
7 need to acquire the claims that I'm asserting. And we know
8 that the debtor isn't going to assert them because all these
9 transfers occurred -- we know now. We didn't know on April
10 22nd when I filed my lawsuit in Miami, but we do know now that
11 McDermott Will & Emery was retained at the latest last
12 February. The transfers that impacted my debtors, my clients
13 and the debtors that they were suing, occurred after that.
14 And the transfers could not have occurred but for the fact
15 that my clients canceled trials and did settlements and
16 awaited for payments in 2024 that we all knew wouldn't come.

17 Now, many of these transfers were last May. This
18 filing was perfect, except for my clients. And by that, I
19 mean, twelve months after the transfers that affected several
20 of my clients occurred. Wait twelve months. 548. Boom.
21 Filing is on June 2nd. June 3rd.

22 So when we talk about what's going to happen with 282
23 debtors, the first thing you have to look to is likelihood of
24 success on the merits under 105(a) when we're looking at Rule
25 65 analysis. What is going on with these cases. I have 238



Colloquy

1 debtors that have nothing, including all of mine. Why do they
2 have nothing? Why do my clients' debtors have nothing?
3 Because they transferred everything because we were suing
4 them. That's all that happened.

5 So the most likely thing that's going to happen when
6 you look at likelihood of success on the merits is next week,
7 after I get back to Tampa, we'll likely file a motion under
8 1112 and say, either dismiss it. Not all these cases, not the
9 opcos, but dismiss the ones that I've sued because they have
10 no assets, other than arguably the property of the estate
11 under 544(b), the claims I've identified, the claims that may
12 have put my debtors into this case.

13 But the bottom line is either you convert those
14 debtors, and we'll have the Chapter 7 Trustee waive attorney-
15 client privilege and find out what McDermott Will & Emery was
16 telling them to do while my clients were suing them. We could
17 do that. Or go to Miami.

18 But to say that all of these debtors have a
19 likelihood of success on the merits to me, at best, is
20 conclusory and at worst it's specious. My clients have claims
21 against debtors that have nothing, that cannot reorganize. So
22 then we go to the next thing -- and not only that, but the
23 105(a) inoculation and the inoculations under 364 and 363
24 would actually deprive my clients of claims that I think the
25 Supreme Court is pretty interested in me keeping. So there, I



Colloquy

1 think we have some major issues.

2 And I think that goes really to the public policy
3 issues. The public policy here, Your Honor, is pretty
4 significant. I represent the estates of dead people, and
5 those estates were created as a result of nursing home
6 negligence. Now, they may not agree that the facts of every
7 case are exactly as we've contended, but they have agreed with
8 respect to every single client of mine.

9 And by the way, there are hundreds more. This case
10 was filed in Georgia, but this case belonged in Florida. Most
11 of the victims are Floridians.

12 And these transfers occurred -- let me say, Your
13 Honor, in in the State of Florida, we have something called
14 Chapter 400.024, and it requires patients or claimants like
15 mine to get a notice when a CHOW is filled out, when there's a
16 change of ownership. It's more than passing strange that 101
17 claimants and their lawyers, seventeen law firms across the
18 State of Florida, didn't get a single notice when McDermott
19 Will & Emery and their 282 clients did all these transfers.
20 Now, that, to me, is not an accident. That's a plan. And
21 that's why I think that these claims against nondebtors should
22 be brought somewhere.

23 Now, if between now and August 13th or now and the
24 time there's a sale or now and the time there's confirmation,
25 the creditors committee wants to intervene in this adversary



Colloquy

1 proceeding, great. They've got the tools. They've got the
2 power. They've got the carve-out.

3 By the way, I don't need a carve-out. We're happy to
4 go leave these cases and leave our claims and go to Miami. We
5 don't want to be diluted by whatever goes on in this case.
6 This is a party for 282, but the caterer only got orders for
7 43. There's forty-three opcos, 282 debtors. This is not --
8 this is not my sort of party. So we're happy to go elsewhere.
9 Our debtors, those dogs won't hunt. And not only that,
10 there's public policy considerations that relate to how did we
11 get here. Why are my clients up here asserting claims.

12 So when we talk about -- and then as far as an
13 imminent risk, Your Honor, as far as our bankruptcy analysis,
14 the only reasons that we have not taken action and filed
15 motions previously with Your Honor is because we're waiting
16 for their filings. Now, we've got some. We've got bankruptcy
17 schedules, statement of affairs filed. Apparently, a plan was
18 filed while I was checking in last night. I haven't seen it
19 yet. But we anticipate doing things.

20 Now, what I think Your Honor is exactly and what the
21 debtors are correct about is these first several counts,
22 they're garden-variety property of the estate. We understand
23 how that works. And we may file a motion at some point in the
24 next few days seeking authority. And counsel says it's not
25 relevant. It's somewhat relevant. It's relevant to the four



Colloquy

1 prongs for injunctive relief. If we seek relief, then we've
2 got to say, Debtor, will you bring this claim? Creditors
3 Committee, will you bring this claim? Is there a reason why
4 you're not? Are you investigating it?

5 Now, once again, Your Honor, I'd say if the creditors
6 committee wants to investigate this, great. They're separate.
7 They were not part of it.

8 I have to say, McDermott Will & Emery, very capable
9 counsel. I don't mean this in any personal way. But they
10 were in this case months prior to the transfers that we were
11 scrutinizing. And now it really does all match up to us.

12 So we think it's up to the creditors committee to
13 determine whether they want to either intervene in Miami or
14 intervene in our adversary proceeding here or they can ask you
15 for further relief or we can ask for further relief because
16 quite frankly, the likelihood of success on the merits based
17 upon what I'm seeing, when counsel says he filed a plan last
18 night, I don't think a sale motion or anything else goes
19 directly to my clients or to their debtors. So that's, I
20 think, where we are.

21 With all that having been said, Your Honor, I do want
22 to impress upon you, I have been consistent from the petition
23 date forward. We haven't filed a paper. We haven't asked
24 for -- we served discovery pre-petition, but we haven't asked
25 for responses. We've told Mr. Diaz's firm, we're not going to



Colloquy

1 default you. And that's for all the right reasons. So an
2 injunction is not necessary. We've said that we won't.

3 I hope that answers Your Honor's questions. And we
4 could go on with 101 stories, and that doesn't count. The
5 lawyers who were calling up saying, hey, we hear that they
6 filed in Atlanta, that doesn't count any of them.

7 But I do want Your Honor to know when this case is
8 over and those remaining opcos are transferred, based upon the
9 way these cases go, two, maybe three years from now, there'll
10 be a whole new set of victims. The same assets, the same
11 operating facilities, will be owned by another layer in a
12 shifting shell game that has been going on for several years.
13 I know it because I chase these around Florida for a living.
14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. LAWALL: Your Honor, at some point --

17 THE COURT: Oh.

18 MR. LAWALL: -- can the committee be heard? I can
19 wait until after debtors -- I know we haven't filed papers,
20 but we may have a few comments if Your Honor is willing to
21 entertain.

22 THE COURT: Okay.

23 MR. LAWALL: We can allow the debtors' counsel, and
24 then I can finish up, if that's okay.

25 THE COURT: Okay. That'd be fine.



Colloquy

1 MR. LAWALL: Thank you, Your Honor.

2 MR. SIMON: I think you might need to file a motion
3 to intervene to be able to speak in the adversary.

4 MR. LAWALL: Well, Your Honor, can we consider this a
5 verbal motion to intervene?

6 UNIDENTIFIED SPEAKER: We do not oppose the creditors
7 committee intervening in this adversary.

8 MR. LAWALL: And with that, Your Honor, counsel for
9 the debtor took the opportunity to provide a status update.
10 And then if we can have the same right, then I can do status
11 update. However you want to proceed, Your Honor.

12 THE COURT: All right. Why don't you go ahead first.

13 MR. BULL: Okay. Thank you, Your Honor. Mr. Anthony
14 made a lot of misstatements and made a lot of comments that
15 don't relate to this motion. Although at the end, he did
16 concede that the majority of his claims belonged to the
17 estate.

18 Turning to one thing he said, that the scheduling of
19 the motion was unnecessary, I think it's good to talk about
20 how we got here. We did have discussions with Mr. Anthony for
21 weeks, if not months, trying to reach a consensual stay and
22 avoid this proceeding. And we gave him a copy of our draft
23 motion papers, and we tried to work with them. And he told us
24 he wouldn't move forward, similar to what he said today and in
25 his papers, but he wouldn't agree to a stay. And he wouldn't



Colloquy

1 agree to move the nondebtors' deadlines to respond to the
2 complaint.

3 So that left the nondebtors in a bind. And it was
4 untenable because there's no certainty without that deadline
5 being moved. And so that's why we actually filed these papers
6 on a Sunday, because that Sunday was June 30th, which was the
7 deadline for the nondebtors to respond to the complaint. So
8 that's why this was necessary, and that's why we're here.

9 He talked a lot about Mr. Diaz. Mr. Diaz is a lawyer
10 for the debtors. He's only a lawyer. He's not an officer or
11 a director for the debtors. But the focus on Diaz, I think,
12 proves our argument, that any discovery into Mr. Diaz, any
13 document discovery, any deposition of Mr. Diaz, he's a lawyer
14 for the debtors. The debtors will have to be involved in
15 that. The debtors have to protect their privilege or risk it
16 being waived. They have to be heavily involved in that.

17 And on the claim for fiduciary duty, reading that
18 claim, we struggled a bit with what it meant in the complaint.
19 But I think what it's saying is that Mr. -- and what Mr.
20 Anthony said today is that Mr. Diaz owes a duty to the
21 creditors because of his supposed purported position at the
22 debtors because they were insolvent. And I think that's what
23 he's saying. And so well, if that's true, that's an estate
24 claim cause of action. That's a quintessential estate claim.

25 And then I think Mr. Anthony alluded to Purdue. The



Colloquy

1 Supreme Court's decision in Purdue prohibited the permanent
2 injunction of third-party claims. It did not prohibit the
3 temporary injunction of third-party claims. And the PI in
4 Purdue remains in place. It's undisturbed, despite that
5 decision. Purdue doesn't undermine the 362(a) automatic stay,
6 and Purdue doesn't undermine the Court's ability to issue a
7 preliminary injunction under 105(a) to temporarily stay third-
8 party claims.

9 Unless Your Honor has any more questions.

10 THE COURT: Not.

11 MR. BULL: Thank you.

12 MR. ANTHONY: Your Honor, can I add one thing in
13 response --

14 THE COURT: You may.

15 MR. ANTHONY: -- to what he said. In late June, I
16 emailed Mr. Cifuentes from Mr. Diaz's office and said under no
17 circumstances would I seek a default or ask him to respond to
18 discovery for as long as this Court has not ruled or I've
19 gotten a green light from all counsel of record for the
20 debtor, the creditors committee, and even Mr. Diaz's office.

21 So that is just wrong. I'm happy to file the email
22 of record if needed.

23 THE COURT: Yeah.

24 MR. ANTHONY: I also want to say Mr. --

25 THE COURT: I don't need any more emails filed.



Colloquy

1 Really.

2 MR. ANTHONY: Very well, Your Honor. The other thing
3 is Mr. Diaz is cloaked, apparently, with some -- or they seek
4 to cloak him with some sort of a stay. But the truth of the
5 matter is although estate assets, apparently, of the opcos,
6 are being used to compensate Mr. Diaz, he hasn't bothered with
7 the 327(e) application. And if he did, then we would find out
8 whether I'm wrong or right regarding his past or present
9 positions with the debtor or with -- the debtors or with other
10 related business entities.

11 The truth of the matter is, if they keep saying that
12 he works for Synergy but he keeps doing work for the debtors,
13 it may be that he's hopelessly conflicted. We've been very
14 surprised over the last three months while we try to assemble
15 information that we certainly couldn't have gotten by April
16 22nd, when we began the Miami case. We've been very
17 interested in those disclosures. We've been waiting for an
18 application because he's certainly in the budget. 600,000
19 dollars. So if they're intent on thinking about 105(a) with
20 Mr. Diaz, they should also be interested in thinking about
21 327(e) and filling out that affidavit.

22 THE COURT: So let me ask you something. So you were
23 talking continuing this matter for some period of time --

24 MR. ANTHONY: Yes, sir, Your Honor.

25 THE COURT: -- for some purpose? It seems to me that



Colloquy

1 the debtors are in, we'll call it, a critical period.

2 MR. ANTHONY: Yes.

3 THE COURT: And Mr. Simon gave us all a nice summary
4 of sort of what all the things that are going on in this case
5 and when all that stuff is likely to conclude. Why can't this
6 just sit still till then?

7 MR. ANTHONY: It can. And Your Honor, that has been
8 my very consistent -- I think the creditors committee knows
9 because creditors committee counsel, I'm under their tent, but
10 I also have my own client. But the representative on the
11 committee John Herskowitz and I have spoken with the creditors
12 committee, and we've assured them and Mr. Morris (ph.) that
13 our goal is not to fire up the Miami case carelessly. But our
14 goal may very well be to either ask the creditors committee to
15 intervene or see what the creditors committee is getting by
16 the way of cooperation with the debtors or the opcos.

17 Once the adversary proceeding was commenced, we
18 thought very seriously about saying, hey, Mr. Simon, it's time
19 for Rule 26. It's time for us to do some discovery because
20 frankly, we don't buy your injunction argument. Rather than
21 do that, we sat even in the case, even in this adversary
22 proceeding, and tried to give them some time to negotiate,
23 some time to think through things, some time for us to wait
24 for the bankruptcy schedules to be filed to see whether or not
25 the financial advisors for the committee and the creditors



Colloquy

1 committee counsel could make some progress on these questions.

2 But Your Honor, it's clear we've hit a nerve. And
3 the nerve is that the opcos may be able to reorganize, but our
4 debtors cannot. They are dead in the water. The only thing
5 they have is claims. And those claims, apparently, are pretty
6 important to equity. They're pretty important, perhaps, to
7 Omega as well because in all honesty, Your Honor, these
8 transfers could not really have occurred, given what we know
9 about the master lease agreement and everything, if it weren't
10 for the fact that Omega gave the nod as well.

11 All of these things, and God knows, these
12 typically -- I don't know because we haven't done discovery.
13 But typically, these SNFs continue to operate in the name of
14 the prior entity for quite some time afterwards. We'd like to
15 know what is that, what's going on there. So these are all
16 Chapter 7-debtor-type issues, and we don't really want to
17 be -- at this point, the idea of our claims being rolled up in
18 the sale of opcos is very troubling. We just wanted to see
19 it.

20 So we're learning with the Court. And candidly,
21 nobody was obligated to share this information in the Miami
22 case. So we're accomplishing a lot just by getting to August
23 13 and reading what they file.

24 THE COURT: Okay. So the injunction that was
25 proposed, or it's part sort of recognition of the automatic



Colloquy

1 stay and part injunction, I think, I'm pretty sure I recall,
2 even as requested by the debtors, is intended to extend either
3 through the confirmation of a plan or the dismissal of a case.
4 You mentioned that you're considering requesting dismissal of
5 your various.

6 So again, how does the injunction impair you one way
7 or the other?

8 MR. ANTHONY: Well, Your Honor, that for most
9 importantly, we don't want any findings of fact or conclusions
10 of law that would be required under Rule 65(d) that there's
11 any likelihood of success in the merits, that there are any
12 public policies. All the public policies militate in favor of
13 my clients. They're victims of the careless, uninsured
14 behavior that's gone on all across the State of Florida and
15 apparently in some other states. But --

16 THE COURT: Well, you might have avoided all of that
17 if you had just consented to this, right?

18 MR. ANTHONY: Well, Your Honor, I don't think that
19 those were the terms. And so why we'd like to come back is
20 because at some point between now and August 13, we may be
21 seeking additional relief. We'll certainly want a Rule 26
22 conference so that we could do the discovery necessary to
23 determine whether or not we should really be saying, let's
24 dismiss or convert these cases and at the same time lift stay
25 to the extent required. But the claims that they are not



Colloquy

1 pursuing, the claims that I have asserted, I think we know the
2 debtors aren't going to pursue them. They've got them up as
3 part of the 363.

4 THE COURT: I don't know if you read their reply.

5 MR. ANTHONY: I'm sorry, Your Honor.

6 THE COURT: I don't know if you read their reply or
7 have looked at other aspects of the docket in this case, but
8 they do have an independent director who they say is looking
9 at these claims, among others, and in fact has been authorized
10 to hire its own law -- his own law firm in that regard. So --

11 MR. ANTHONY: Well, Your Honor --

12 THE COURT: -- aren't we jumping the gun here, saying
13 the debtors aren't going to pursue these claims?

14 MR. ANTHONY: I don't think that we are jumping the
15 gun because the debtors are represented by the same law firm
16 that was counsel when these transfers were occurring.

17 I will say that, although Mr. Simon had objected to
18 the creditors committee speaking because they haven't appeared
19 in this adversary proceeding, the creditors committee may have
20 a different perspective. And I'd certainly like to hear it
21 because when you're -- if the independent director for 282
22 companies reaches a conclusion that benefits the opcos and
23 contemplates either a release or a stay or anything else that
24 pertain to the debtors corresponding to my claims, I think
25 that that is fraught with conflicts that cannot possibly be

Colloquy

1 overcome.

2 There are two sets of debtors in this case. There
3 are opcos. There are divestcos. We understand that the opcos
4 need money, and so they borrow money from their landlord.
5 They borrow money from a insider. And what do they want in
6 return? These lenders want a release. But that release only
7 comes from my clients' debtors. I'm not so thrilled about the
8 idea of --

9 THE COURT: Your clients aren't the only creditors in
10 this case, you know.

11 MR. ANTHONY: No, my clients are -- my clients are
12 the major creditors in the debtors' cases that they have
13 claims against. I think that when we talk about -- and Your
14 Honor, you're exactly right. The dilution principle is at
15 issue here. There are 282 companies and the debt of 282
16 companies, but there's only forty-three entities that have
17 assets to sell at an asset sale. That's what makes these
18 jointly administered 282 cases so untenable.

19 We don't want to stick around for a five-percent
20 distribution. We'll take our chances elsewhere. And the only
21 question has been how and when to ask Your Honor, and the
22 reason why we haven't been anxious to say what we'll do, other
23 than we're going to ask the judge when it's time to ask, but
24 we're not going to take any further action, the only reason
25 we've done that is because we don't know what to do yet.



Colloquy

1 We've waited for filings. We've waited to see what the
2 creditors committee is going to do. And we've very
3 thoughtfully and deliberately done nothing. It's not that
4 we're kicking the can. It's that we're quietly reading,
5 quietly researching.

6 At the point in time that we filed the complaint, we
7 couldn't match up the facilities with the current operators.
8 My clients and the seventeen law firms that acted as the board
9 of directors for the business entity that brought the lawsuit
10 in Miami, they said, go ahead and file the lawsuit now, do
11 discovery, and we'll find out who's operating them. Well, now
12 we have a pretty good idea as to who's operating them.

13 Now, Counsel says we're wrong. And who am I to
14 disagree with him about the proposition that a sister of LaVie
15 owns the business entities that are transferees? If we
16 did discovery, we would know the answer to that. Maybe I
17 wouldn't be here. But it'll be discovery in the adversary
18 proceeding, nonetheless.

19 And we certainly would love to have the creditors
20 committee intervene. I've accomplished a lot if that's all
21 that comes out of this.

22 THE COURT: Yeah. Bankruptcy is a process of
23 disclosure, right?

24 MR. ANTHONY: Yes, sir, Your Honor.

25 THE COURT: And you'll learn a lot that you wouldn't



Colloquy

1 necessarily have learned in connection --

2 MR. ANTHONY: In Miami.

3 THE COURT: -- with your lawsuit, both being on the
4 creditors committee and just generally being a creditor in the
5 cases. Obviously, there'll be a 341. If your examination
6 there takes too long, maybe you have a 2004 examination. The
7 debtors have already filed a raft of information that I think
8 maybe makes clearer than the public record would have --

9 MR. ANTHONY: Yes, sir.

10 THE COURT: -- who owns what and what does what and
11 filed lots of declarations about how they operate so --

12 MR. ANTHONY: And that's the plus. That's why, when
13 I say I'm not really saying kick the can, I'm saying by August
14 13, I have a lot of reading to do, just that -- and we can't
15 bring our electronic devices into the courtroom, but my
16 understanding is there's a plan waiting for me and a reply
17 waiting for me that I didn't get to yesterday.

18 And so I mean, this time will be spent very wisely.
19 And is it a -- is it an injunction, I think not, or a TRO.
20 But I am saying, consistent with what I've said for the last
21 three months, that we anticipate that no action will be taken
22 and without an order of this Court and other than in the
23 context of the adversary proceeding or any new contested
24 matter that might be commenced. And obviously, we're ready
25 for Rule 26 in this adversary proceeding.



Colloquy

1 And then the plan would be to take a brief deposition
2 of each debtor, brief deposition of each of the nondebtor
3 defendants, and figure out what's going on here. If in the
4 meantime, the creditors committee, either intervening in this
5 adversary or in their ongoing dialog with the debtor, finds
6 some other way to do it, 2004 exams or something like that, it
7 may be that we can ride the creditors committee's coattails.
8 But this is a -- these are the options.

9 But I think it's important that Your Honor know that
10 this case is not some business case that just started because
11 somebody couldn't pay their bills. The method of these cases,
12 at least in the State of Florida, is don't carry enough
13 insurance, provide minimal service, wait to get sued, have
14 your CHOW applications continue --

15 THE COURT: Let me ask, so what's enough insurance?
16 I saw that in your pleadings, and I'm curious about that.

17 MR. ANTHONY: These SNFs generally carry the very
18 most minimal insurance. And Your Honor, I think --

19 THE COURT: Well, what is that?

20 MR. ANTHONY: It's about 10,000 dollars.

21 THE COURT: Okay.

22 MR. ANTHONY: So the claims that we have, I mean, we
23 have very large claims that come out of these cases, not this
24 specific set of bankruptcy cases or these 101 clients. These
25 were all negotiated down very aggressively, very heavily.



Colloquy

1 We're not arguing about the deals. In fact, the lawsuit was
2 commenced in Miami in part to adjudicate, hey, these are
3 enforceable settlements. You've agreed to the amount, and
4 here they are. And that hasn't been disputed. But these
5 claims can be very large, and the level of care is not --

6 The AARP every other year does a poll nationwide
7 amongst all the doctors for the elderly. And it's shocking to
8 me that a state with as much money, wealthy retirees as the
9 State of Florida, would be ranked forty-third. And it is
10 because of all of these bankrupt nursing homes that file in
11 states other than Florida and discharge huge amount of debt.

12 Now, let's be clear. The trade debt will follow the
13 newco. When the asset sale occurs out of 363 with whatever
14 requirements are needed for good faith purchaser, those assets
15 will transfer and a lot of the trade debt will be picked up in
16 one way or another. People are going to keep their job, and
17 it's going to be business as usual. The only folks that
18 really stuck holding the bag are the victims of the horrible
19 service.

20 We'll be back. It won't be the same people. It'll
21 be the same class of people, the same class of claimants with
22 the same horrible service. One of them's my dad, and he's my
23 next stop in St. Augustine. Thank you, Your Honor.

24 THE COURT: Okay. So one more thing. So I'm sort of
25 perplexed. I was going to ask you a question, but then you



Colloquy

1 said that you don't really intend to pursue these guys. I was
2 going to ask if no injunction were entered but a bunch of
3 these claims are all owned by the debtor, what could you
4 actually do in the Florida lawsuit? Because it doesn't
5 seem -- there's nothing obvious to me that you could actually
6 do with the claims that aren't owned by the debtor, if there
7 are any.

8 MR. ANTHONY: If the debtor --

9 THE COURT: I don't know how you could --

10 MR. ANTHONY: -- lets abstractly --

11 THE COURT: -- how you could take a deposition or
12 conduct any actual document discovery without somehow
13 advancing a claim against the debtor or that's owned by the
14 debtor. So in that circumstance, I don't know -- again, and I
15 hear you saying you're not going to -- you're not going to
16 proceed against them, but I don't know how you could proceed
17 even if I wasn't here.

18 MR. ANTHONY: So if there were no bankruptcy case,
19 obviously I could proceed. We're making a lot --

20 THE COURT: Well, sure. Yeah. I'm sure.

21 MR. ANTHONY: -- of progress with that. That was, I
22 guess, part of the filing.

23 THE COURT: But if nobody had asked me for a stay,
24 that given the nature of the claims you've asserted, and
25 again, as you pointed out, it's all about one course of



Colloquy

1 conduct, all conducted by the debtors and the people they
2 transferred these assets to. I don't know how you conduct any
3 discovery about anything that someone wouldn't assert --
4 either advances a claim against the debtors or advances a
5 claim that's owned by the debtors.

6 MR. SIMON: If the concern is that it would impact
7 the debtors, claims against the affiliates of LaVie or the
8 parent of LaVie, Synergy, I don't think that that argument
9 holds water because to say that you have indemnification
10 claims or something like that, that's at best a zero-sum game.
11 In other words, I've got nine-and-a-half million of unpaid
12 claims on ten-and-a-half million of settlement agreements,
13 that Mr. Diaz made his negotiations, they made one million
14 dollars' worth of payments, and here we are with the rest.

15 And if I hit in Miami nine-and-a-half-million
16 dollars, then for sure our claims won't be in this case. Now,
17 they say they'll have nine-and-a-half million dollars' worth
18 of indemnity claims, but why would an indemnitor be obligated
19 for the direct liability of our nondebtor targets? It
20 absolutely would not be. I mean, that's Florida law. When a
21 tortfeasor commits an independent --

22 THE COURT: But set aside the indemnity issue, just
23 what discovery could you possibly take?

24 MR. ANTHONY: I think we could take discovery -- we
25 could take all discovery directly related to the liability of



Colloquy

1 Synergy, Diaz, Aspire, and Inspire.

2 THE COURT: Which all relate to claims that are
3 either owned by the debtor or asserted against the debtor.

4 MR. ANTHONY: Your Honor, I don't think that they
5 are. In fact, in our preparation for today's hearing, we saw
6 a very similar argument raised by Mr. Simon for something
7 called Gulf Coast, another nursing home bankruptcy with
8 similar properties, a lot of Florida claimants. And the idea
9 that somehow the debtor is the only source of a claim when
10 the, the actual conduct was misconduct of the parent company
11 and of Mr. Diaz toward my specific clients, that's different.

12 And in all honesty, it helps the estate for them to
13 pay us. Assuming, theoretically, that subcon actually
14 occurred here, which nobody's bothered to move for, that's one
15 of the things that we've been waiting for for the last three
16 months. If you're going to substantively consolidate, I want
17 to see how that would look. But to be perfectly honest, with
18 respect to the specific debtors that we're keyed to, those
19 forty-eight, if we get paid by somebody else, the estates
20 benefit. There is no doubt about it.

21 THE COURT: Except for the indemnity.

22 MR. ANTHONY: But the indemnity is a canard. Your
23 Honor, what's really going on is that there is no right of --
24 if there's a contractual right of indemnity, that's not going
25 to be enforceable. This Court would preside over that.



Colloquy

1 That'd be core.

2 So how could it be that Your Honor would allow an
3 indemnity claim to be enforced by a tortfeasor whose direct
4 tort against my clients triggered their own proper liability?
5 At the very best, it would be neutral. You're just changing
6 creditors. But I can't imagine that that would be -- the
7 contract, we stipulated, go ahead and introduce the
8 declaration because all those documents show pretty clearly
9 that you could not, under Florida law, enforce that against
10 these debtors.

11 We'll take this whole thing off the Court's hands. I
12 mean, these -- the only thing, to point to the elephant in the
13 room, is that the debtors, the principals of the debtors, and
14 probably the landlords for the debtors, or the landlord for
15 the debtors, Omega, they want that release. The release is
16 more important than whatever those forty-three opcos are. The
17 releases are more valuable than those opcos. And we believe
18 that so much, we'd be delighted to drop our claims in these
19 cases and just pursue the claims against the nondebtors.
20 We'll get a hundred cents on the dollar that way, rather than
21 five cents hanging out with the creditors committee.

22 And we've thought through it. We don't need any
23 carve-out. We don't need any money. We can do this. I do
24 this all day long. This is a great, big, huge version of what
25 we chase around, these shifting shell games, in health care.



Colloquy

1 THE COURT: Okay. Thank you.

2 MR. ANTHONY: Thank you, Your Honor.

3 MR. BULL: Your Honor, may I address that for a
4 moment?

5 THE COURT: You can.

6 MR. BULL: Thank you. Mr. Anthony pursuing his
7 claims doesn't help the estate. The debtors have to be
8 involved, and the nondebtors are indemnified. And whether
9 those indemnification claims are successful or not, the
10 prosecution of them adversely affects the estate.

11 And as Your Honor pointed out, the claims that are
12 brought against the nondebtors, the claims that are not
13 purportedly the property of the estate, those claims are
14 unfair trade practices, civil conspiracy, unjust enrichment,
15 all those claims revolve around the theory that the debtors
16 intentionally missed settlement payments and moved assets away
17 from the plaintiffs. All those claims revolve around debtors'
18 conduct. There's no way to extricate those claims from the
19 debtors. Thank you.

20 THE COURT: Thank you.

21 MR. LAWALL: Good morning, Your Honor, and thank you.

22 THE COURT: And now, a status update from the
23 creditors committee.

24 MR. LAWALL: Your Honor, Fran Lawall, Troutman, on
25 behalf of the committee. The committee has not yet made a



Colloquy

1 decision whether it's going to intervene, either in this
2 action or in the Florida action.

3 More importantly, however, I think Your Honor is
4 getting a flavor of the complexity with respect to these
5 cases. And with 282 debtors, only 43 operating companies,
6 clearly there's an issue as to where the other 240-some-odd
7 estates are going to recover. And so these potential causes
8 of action need to be investigated. It needs to be
9 transparent. And unfortunately --

10 THE COURT: And I assume you're doing.

11 MR. LAWALL: And we are, Your Honor. We have a
12 couple of concerns that we want to raise with Your Honor. But
13 yes, we are absolutely pursuing that.

14 We recognize, now that a plan has been filed, we have
15 some concern with respect to that plan. In part, if Your
16 Honor looks at the plan, you'll see, as Mr. Simon has
17 indicated, it is a placeholder. It is going to be an
18 iterative process. We appreciate that. But we do have
19 concerns that that document going out on notice at this point,
20 given the cost and the complexity of giving notice given how
21 vague that it is, it's ultimately going to waste the estate's
22 resources for purposes of noticing a document where if there
23 are going to be substantial changes probably are going to have
24 to be renoticed anyway.

25 The other concern, Your Honor, and I recognize we're



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1 operating --

2 THE COURT: Can we notice a date for a disclosure
3 statement hearing without a disclosure statement or without
4 sending out a disclosure statement?

5 MR. LAWALL: I don't see how, Your Honor. That's the
6 problem. And so it becomes circular in terms of if you look
7 at the document, the document is incredibly vague,
8 understanding, given the premature nature and the early nature
9 of this case. But right now, that document, the only thing
10 that really jumps out at you at this point is that there are
11 releases in there for many of the secured creditors.

12 But there's no obvious source of funding for anyone
13 other than potentially this sale, which, if you look at it,
14 the argument's going to be it's going to pay that waterfall of
15 secured creditors, as well as the forty-two operating debtors.
16 But you're still left with the other 240 debtors that there is
17 no obvious source of payment at this time.

18 THE COURT: Right, or it proposes a sale with some
19 unidentified equity source.

20 MR. LAWALL: Right, Your Honor. I can't imagine
21 anyone stepping into the equity of these debtors, given the
22 debt load that's there. I just, it's just unfathomable. And
23 I recognize why on a theoretical basis someone might, at this
24 stage of the game, it's so lacking in terms of specifics
25 that -- again, we're just raising the concern, given the

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1 limited availability of funds in this case, sending it out on
2 notice right now may be a fool's errand, as opposed to trying
3 to advance some of what we're trying to do at this point,
4 including the investigation.

5 And with respect to the investigation, there are some
6 troubling facts here that need to be further pursued, and we
7 are trying to do so. The debtor has fully loaded the data
8 room with lots and lots of documents, but there are still a
9 lot of issues that yet need to be investigated, including some
10 of the transferees, including some of the nondebtor parties,
11 including some of the affiliates with respect to the nondebtor
12 parties. There is a lot to be done there, but we're working
13 on it at this stage.

14 Your Honor raised the issue with respect to the
15 independent director. That's terrific. That's great that
16 there is an independent director. But we do have some
17 concerns that any law firm that is advising the independent
18 director should have nothing to do with the prior
19 transactions.

20 There shouldn't be any fee billing. There shouldn't
21 be anything. It should be completely isolated. So to the
22 extent that there's going to be reliance with respect to any
23 determination the independent director makes, it should be
24 based upon independent counsel, counsel who has not been
25 involved in this case.



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1 THE COURT: Okay. We've already approved counsel for
2 the independent director, haven't we?

3 MR. LAWALL: We have, Your Honor. But again, we want
4 to make sure that the independent director is not relying upon
5 any other counsel. And we have reason to believe that that
6 may be going on.

7 THE COURT: Okay.

8 MR. LAWALL: Second, Your Honor, with respect to Mr.
9 Diaz, we don't know that much about him, but as counsel has
10 now indicated, he is counsel for the debtor. We have been
11 trying to work with Mr. Simon, who has been cooperative with
12 us on these issues. But we do believe that Mr. Diaz should
13 file a retention application in this case and fully disclose
14 all of the hats that he is wearing so that everyone has
15 complete transparency.

16 THE COURT: He wasn't on the ordinary course
17 professionals?

18 MR. LAWALL: He's not, Your Honor.

19 THE COURT: Okay.

20 MR. LAWALL: The way it's working right now is that
21 he's part of the Synergy retention, and that, if my memory
22 serves, is about 600,000 dollars set aside for the Diaz firm.
23 We have no reason to disparage Mr. Diaz at this point, but
24 just given the significance of his participation, that we
25 think there should be full and complete transparency.



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1 From the committee's perspective, all we want is full
2 and open transparency and time enough to do the investigation
3 necessary to assure all the claimants, whether there are
4 causes of action there or not, that they know if whatever the
5 recovery is going to be, five cents, fifty cents, a hundred
6 cents, they can be comfortable knowing it's been fully vetted.

7 Given the timeline that we currently have right now
8 is really compressed with this plan. We get it. We're
9 working on it. We may require additional time. We don't know
10 yet. But I'm sure the debtor will cooperate with us in terms
11 of scheduling interviews and whatever is necessary and
12 probably 2004s. We are preparing formal discovery at this
13 point with respect to some parties. We hope to do
14 investigations through interviews, and then if we have to do
15 2004s, we will.

16 This is a long way of saying, Your Honor, the
17 committee understands the concerns with respect to the Florida
18 claimants. We don't think that they are -- we think there
19 could be substance there. We believe, and we are
20 investigating them, we will cooperate with them. Whichever
21 way you rule, we are going to continue to go down our path so
22 Your Honor can be comfortable that we're doing that.

23 But again, these are really important issues, and
24 they may be the only source. And there are disconcerting
25 facts here, Your Honor, that need to be looked at closely in



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1 connection with some of these transfers. And we will vet
2 them, and then we'll report back to the Court and the rest of
3 the parties.

4 THE COURT: Okay. Very good. But --

5 MR. LAWALL: Thank you, Your Honor.

6 THE COURT: -- you mentioned, though, this case is
7 moving along quickly, and I think that's true. I've taken to
8 heart, and I think that's also true what Mr. Simon said when
9 we started here, which is that these are nursing homes.
10 Nursing homes are not going to do well in bankruptcy for a
11 long time, that this process needs to be, by the nature of the
12 business they conduct, we need to get this done as quickly as
13 possible.

14 MR. LAWALL: We agree, Your Honor. In fact, that's
15 why, if you'll notice, the committee has supported the sale
16 process. These are going down two different paths. The sale
17 process is moving forward. We have not -- we've reached our
18 peace with the debtor at this stage on the sale process. We
19 agree with you completely.

20 These assets will not get better with age. How they
21 actually end up transacting is another issue. I mean, there
22 are issues with respect to the Omega leases and the other
23 secured debt. We'll work that out once and assuming we find a
24 buyer. But we are not trying to slow down that sale. This is
25 really a separate path here, Your Honor, in terms of the



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1 causes of action that we need to make sure that the time and
2 possibly the resources, if they are necessary to investigate
3 them.

4 If the debtors' going to insist on these entities
5 staying in Chapter 11, and again, there's almost 240
6 nonoperating entities that are in bankruptcy right now, if
7 they're going to insist in keeping them in Chapter 11, then
8 they need to be investigated, they need to be vetted, so that
9 everyone has comfort with respect to whatever is there or not
10 there. That's the only point.

11 THE COURT: All right. We have 282, and it's not
12 that there are 240 former operators because a number of the
13 other in the other basket are administrative companies and
14 companies --

15 MR. LAWALL: There was some, Your Honor.

16 THE COURT: -- that do various things that are not --
17 that don't own a SNF, which I guess I've now learned is a
18 term.

19 MR. LAWALL: Right. Right. That's correct, Your
20 Honor. There are probably administrative entities in there
21 that are likely not doing any business at this point as well.

22 Now, granted, there may be some in there, but at this
23 point, probably the lion's share of them are shells and
24 nonoperative. But that's part of the investigation.

25 THE COURT: Okay. Very good.



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1 MR. LAWALL: Thank you, Your Honor.

2 THE COURT: Thank you for the update.

3 MR. SIMON: With Your Honor's permission, may I just
4 have two minutes?

5 THE COURT: You may.

6 MR. SIMON: Thank you, Your Honor.

7 THE COURT: I got all morning.

8 MR. SIMON: I don't need all morning. There's been
9 an enormous amount said today, a lot of facts with no
10 evidence, a lot of incorrect facts, a lot of
11 misrepresentations from the parties. I'm not going to -- I'm
12 not going to go tit for tat.

13 THE COURT: No, what's evidence in this proceeding so
14 far is the statement by our turnaround fellow, and that's all
15 the evidence and the documents attached thereto. So I've --

16 MR. SIMON: Mr. Jones.

17 THE COURT: -- heard a lot of things, but most of the
18 rest of it -- well, none of the rest of it constitutes
19 evidence for the purposes of this hearing.

20 MR. SIMON: Thank you, Your Honor. And again, Mr.
21 Jones has been clamoring to sit on the witness stand. But one
22 of these days, you'll hear directly from him.

23 Obviously, there's a lot of work to do. But there is
24 limited liquidity. We have a DIP that was entered with the
25 consent of the creditors committee. It has milestones. We're



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1 complying with those milestones. We've now noticed both a
2 sale hearing and we will notice a disclosure statement hearing
3 fifty days from yesterday, which is when we filed it. More
4 than enough time. Obviously, plan confirmation, to the extent
5 it's scheduled at that time, will be done on proper notice.

6 We continue to collaborate with the creditors
7 committee. We're now up to 120 diligence requests that we're
8 working on. And literally while Mr. Anthony was speaking, Mr.
9 Lawall's partner Ms. Kovsky emailed us to schedule another
10 time this afternoon to walk through additional diligence
11 requests, which we will do. So that process is ongoing.

12 You're correct, Your Honor. Mr. Decker, who's not in
13 the courtroom today but was in the courtroom last time, is the
14 independent manager. He's doing an investigation. There are
15 discussions with the creditors committee about the appropriate
16 way to provide them access and collaborate with respect to
17 information so that they could do their job. That process is
18 well, well underway, and we'll continue to collaborate with
19 them on that.

20 There has been a lot said about Mr. Diaz. I don't
21 need to get into it. Mr. Diaz was counsel to the operators in
22 connection with these issues prior to the petition date.
23 Those are all stayed. Mr. Diaz's role is with Synergy now.
24 He's not directly employed or retained by the debtors.

25 But we're working with the creditors committee.



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1 They've raised concerns. They've asked about 327. We're
2 providing them with additional disclosures. And we'll see
3 where that goes.

4 But we're in constant discussion with the creditors
5 committee on all the issues raised today, the issues about
6 divestcos, as has been articulated by Mr. Lawall, the issues
7 about the investigation, the diligence request, Mr. Diaz's
8 retention. We'll continue to work through those, and
9 obviously, if parties or the debtors file a motion, parties
10 will have an opportunity to respond on any of those issues.
11 And we can be before Your Court, whether it's a motion to
12 convert, whether it's otherwise.

13 We're trying to do it with as much time, do it
14 through proper evidence, and provide you with the information
15 you need. None of these issues are before the Court today.
16 That's all I have, Your Honor.

17 THE COURT: All right. All right. Are we done with
18 the presentations for today?

19 MR. SIMON: I think we're done. We would just -- not
20 to speak for Mr. Bull, but we would seek Your Honor's ruling
21 or respectfully request that Your Honor enter the proposed
22 order with respect to the adversary.

23 MR. ANTHONY: And Your Honor, very briefly, we would
24 like Your Honor to consider holding everything in abeyance
25 until August 13, at which point we can vet further things. We



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1 certainly understand that no further activities in Miami are
2 anticipated. Your Honor doesn't need to order that. So
3 65(d), it's not in play. Having said that, Your Honor, the
4 matter has been fully vetted, and we understand that you will
5 rule.

6 THE COURT: All right. It's 11 o'clock. Why don't
7 we take about a thirty-minute break? I'll be back at 11:30.
8 Provide you my ruling then.

9 THE CLERK: All rise.

10 (Recess from 10:57 a.m. until 11:55 a.m.)

11 THE CLERK: Court will come to order.

12 Good morning, Your Honor. Today is July 24th, 2024.
13 The time is now 11:56 a.m. We returning for recess. And for
14 the record, we are here for the specially set hybrid hearing
15 in the adversary proceeding for 24-5127, LaVie Care Centers,
16 LLC, et al. v. Healthcare Negligence Settlement Recovery Corp.

17 THE COURT: Well, welcome back, everyone. I
18 apologize for a little more lengthy delay than I had
19 anticipated, but I'm ready to deliver my ruling in this matter
20 at this time.

21 Thank you all for your presentations this morning.
22 Mr. Bull and Mr. Anthony, it's a pleasure to make your
23 acquaintance. And I commend you both for your work this
24 morning. Mr. Anthony, thank you especially for providing your
25 client's perspective on these cases and your client's claims.



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1 As a preliminary matter, and although I don't think
2 it's an issue raised by Mr. Anthony as a defense, but as the
3 bankruptcy courts in Delaware in Parlement Technologies and
4 Chicago in Coast to Coast Leasing have recently correctly
5 held, the Supreme Court opinion in Purdue Pharma does not
6 prevent this Court from issuing the injunction requested here.

7 As may already be clear, I don't think it's possible
8 for Healthcare Negligence Settlement Recovery Corp., who I'll
9 call HNSRC for the remainder of this talk, to proceed in any
10 sensible respect with what it calls the Miami action in its
11 papers without violating the automatic stay, either by
12 prosecuting claims owned by the various bankruptcy estates of
13 the involved debtors, or by prosecuting claims against those
14 estates.

15 Although I appreciate Mr. Anthony's representations
16 that HNSRC will not proceed with the Miami action without
17 taking certain steps first, I don't think that alone is
18 adequate.

19 I don't think that -- I also don't think that
20 continuing this hearing until the next omnibus hearing date in
21 early August is adequate either because I just don't think
22 enough will happen on the various fronts in this case that
23 would make that date materially different from today. So in
24 short, I find the defendant's motion is well taken and should
25 be granted for the reasons I will outline in the next few



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1 minutes and to the extent I'll describe.

2 The Miami action is at its very beginning. The
3 complaint was filed in late April, and extensions of time to
4 respond have been given such that no responsive pleadings have
5 yet been filed. HNSRC further professes in its pleadings and
6 here today no desire to proceed with the action at this time.
7 Consequently, enjoining the prosecution of this lawsuit would
8 result in little to no prejudice to the plaintiff.

9 It's undisputed that at least a majority of the
10 counts in the complaint are property of the estate. And thus,
11 absent authorizations not in place here today, the prosecution
12 of them by a party other than the debtor would clearly violate
13 Section 362(a)(3).

14 The counts in the complaint and the Miami action are
15 all based on a common nucleus of alleged wrongdoing by the
16 debtors and the purported transferees, such that any
17 prosecution of any of the claims would likely constitute
18 prosecution of all of them in violation of Section 362(a)(1).
19 No way to pursue any material part of the complaint without
20 advancing all parts of the complaint has been outlined. And
21 even if a more limited path could be identified, it would be
22 very inefficient for all the parties, including HNSRC and the
23 debtors, to proceed with that now and the rest later. And
24 arguments over whether particular discovery did or did not
25 advance the litigation against the debtors or on the estates

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1 causes of action would certainly proliferate.

2 Certain of the claims are covered by indemnifications
3 made by some of the debtors, providing that identity of
4 interest between those debtors and the relevant nondebtors.
5 Because the debtors are also parties to the Miami action, they
6 may also be prejudiced by the prosecution of that complaint
7 through the application of res judicata or collateral
8 estoppel.

9 Maybe most importantly, as I outlined earlier, this
10 case is in a critical period. The debtors are pursuing both
11 the potential sale of substantially all their assets and a
12 plan. The sales process is presently set to conclude by the
13 middle of September. And with the plan now filed, the plan
14 process could wrap up in an only slightly longer time frame.
15 So the next seventy days or so are critical to this case.
16 Distracting the debtors, officers, directors and professionals
17 by requiring them to focus in any material respect on this
18 litigation would result in immediate and irreparable harm to
19 all the constituencies in this case and must be avoided.

20 As I just mentioned, the debtors are pursuing both
21 the sales process of certain of the debtors and a plan for all
22 of them. Consequently, as far as it can be assessed at this
23 point in time, the debtors have a substantial likelihood of
24 success on the merits in the sense that it is likely that
25 these cases will reach a successful conclusion. As to the

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1 debtors involved in the Miami action, such a conclusion could
2 also include the prosecution by the estate representatives of
3 just the types of claims asserted in the Miami action, with
4 the distribution of the proceeds of those claims to all
5 creditors, not just HNSRC.

6 All of the causes of action in the complaint are
7 among the kinds of claims the committee is investigating, with
8 a deadline for the assertion of some of those claims in
9 September as well. The plaintiff is on the committee and thus
10 will be participating in the investigation of these and other
11 claims, with counsel provided at debtors' expense. This is
12 the opposite of prejudice to them, although the committee
13 should be given first chance to pursue such claims, assuming
14 the debtors through their independent director do not, which
15 is also not a foregone conclusion. The equities favor the
16 debtors, as the plaintiffs will suffer little to no harm. The
17 debtors would be irreparably harmed.

18 The initial delay the Court will impose is relatively
19 short. The Court will grant the motion and will enjoin the
20 prosecution of the Miami action through the earlier of the
21 confirmation of a plan with regard to all of the debtors that
22 are defendants in the Miami action, two, the dismissal of the
23 pending cases against all of the debtors that are defendants
24 in the Miami action, or three, the end of September. And
25 we'll set a hearing to consider the continuation of the



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1 injunction on September 30th, 2024, assuming that date works
2 for the parties. By that time, the sales and confirmation
3 processes should be concluded, or nearly so, and the committee
4 will fully consider what claims they wish to pursue.

5 Any questions?

6 MR. BULL: Thank you, Your Honor. No questions.

7 THE COURT: Otherwise, I know the debtor has
8 submitted a form of order. It'll have to be modified a little
9 bit to accommodate another hearing, as well as to incorporate
10 the sort of for the reasons set forth on the record with
11 regard to the decision.

12 MR. SIMON: We will take care of that, Your Honor.
13 Thank you.

14 THE COURT: Okay.

15 MR. ANTHONY: Thank you very much, Your Honor. I
16 appreciate the (indiscernible).

17 THE COURT: Y'all have a good rest of your day.

18 MR. LAWALL: Thank you, Your Honor.

19 MR. BULL: Thank you, Your Honor.

20 THE CLERK: That concludes all matters. All rise.

21 (Whereupon these proceedings were concluded at 12:03 PM)

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C E R T I F I C A T I O N

I, River Wolfe, the court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.


RIVER WOLFE

July 25, 2024
DATE

TTA-Certified Digital Legal Transcriber, CDLT-265