

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 22-30659 (MVL)
	.	(Jointly Administered)
	.	
NORTHWEST SENIOR HOUSING CORPORATION, <i>et al.</i> ,	.	U.S. Bankruptcy Court
	.	1100 Commerce Street
	.	Dallas, Texas 75242
	.	
Debtors.	.	
. . . . .	.	
	.	
NORTHWEST SENIOR HOUSING CORPORATION,	.	Adv. Case No. 22-03040 (MVL)
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
INTERCITY INVESTMENT PROPERTIES, INC. and KONG CAPITAL, LLC,	.	
	.	
Defendants.	.	
. . . . .	.	
	.	
OFFICIAL COMMITTEE OF UNSECURED CREDITORS,	.	Adv. Case No. 22-03073 (MVL)
	.	
Counter-Plaintiff,	.	
	.	
v.	.	
	.	
UMB BANK, N.A., AS BOND TRUSTEE AND MASTER TRUSTEE,	.	
	.	
Counter-Defendant.	.	Thursday, September 29, 2022
. . . . .	.	9:36 A.M.

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE MICHELLE V. LARSON  
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Hawaii S. Jeng

Proceedings recorded by electronic sound recording, transcript  
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LIBERTY TRANSCRIPTS  
7306 Danwood Drive  
Austin, Texas 78759  
E-mail: DBPATEL1180@GMAIL.COM  
(847) 848-4907



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APPEARANCES:

For the Debtor:

Polsinelli PC  
BY: JEREMY R. JOHNSON, ESQUIRE  
600 Third Avenue, 42nd Floor  
New York, New York 10016

Polsinelli PC  
BY: TRINITEE G. GREEN, ESQUIRE  
2950 North Harwood, Suite 2100  
Dallas, Texas 75201

Polsinelli PC  
BY: JERRY L. SWITZER, JR., ESQUIRE  
150 North Riverside Plaza, Suite 3000  
Chicago, Illinois 60606

Polsinelli PC  
BY: ANDREW J. ENNIS, ESQUIRE  
900 West 48th Place, Suite 900  
Kansas City, Missouri 64112

For the Official  
Committee of Unsecured  
Creditors:

Foley & Lardner, LLP  
BY: STEPHEN A. MCCARTIN, ESQUIRE  
MARK C. MOORE, ESQUIRE  
THOMAS C. SCANNELL, ESQUIRE  
2021 McKinney Avenue, Suite 1600  
Dallas, Texas 75201

For UMB Bank, N.A.:

Haynes and Boone, LLP  
BY: J. FRASHER MURPHY, ESQUIRE  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219

Mintz Levin Cohn Ferris Glovsky Popeo  
BY: DANIEL S. BLECK, ESQUIRE  
ERIC R. BLYTHE, ESQUIRE  
EMILY KANSTROOM MUSGRAVE, ESQUIRE  
CAITLIN A. HILL, ESQUIRE  
One Financial Center  
Boston, Massachusetts 02111

For Lifespace  
Communities, Inc.:

Perkins Coie LLP  
BY: ERIC E. WALKER, ESQUIRE  
110 North Wacker Drive, Suite 3400  
Chicago, Illinois 60606

APPEARANCES (CONTINUED):

For the Trustee: Office of the United States Trustee  
BY: LISA LAMBERT, ESQUIRE  
1100 Commerce Street, Room 976  
Dallas, Texas 75242

For Intercity Levenfeld & Pearlstein, LLC  
Investment Properties BY: ELIZABETH B. VANDESTEEG, ESQUIRE  
Inc.: EILEEN M. SETHNA, ESQUIRE  
HAROLD D. ISRAEL, ESQUIRE  
2 N. LaSalle Street, Suite 1300  
Chicago, Illinois 60602

Jackson Walker L.L.P.  
BY: MICHAEL SCOTT HELD, ESQUIRE  
2323 Ross Avenue, Suite 600  
Dallas, Texas 75201

For Estate of Benton Williams PLLC  
Patricia Adams and BY: BENTON E. WILLIAMS, II, ESQUIRE  
Pamela Siviglia: 100 Crescent Court, Suite 700  
Dallas, Texas 75201

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1 (Proceedings commenced at 9:36 a.m.)

2 THE CLERK: -- Judge Michelle Larson presiding.

3 THE COURT: Please be seated.

4 Good morning everyone. We are here -- we have all-  
5 day matters in both the bankruptcy and the adversary. I'm  
6 going to go ahead and call them both to give folks flexibility  
7 as to which matters they want to have heard just in terms of  
8 logistical order.

9 So I'm going to go ahead and call Case Number 22-  
10 30659, Northwest Senior Housing Corp and Adversary Number 22-  
11 03040.

12 I'll take appearances for the record.

13 MR. JOHNSON: Good morning, Your Honor. Jeremy  
14 Johnson from Polsinelli. With me is Trinitee Green, Jay  
15 Switzer, and Andrew Ennis. Jay and Andrew -- Mr. Ennis and Mr.  
16 Switzer are here for the adversary, and Ms. Green and I are  
17 here for the main. Thank you.

18 THE COURT: Good morning. Thank you.

19 MR. McCARTIN: Good morning, Your Honor. Steve  
20 McCartin and Tom Scannell and Mark Moore on behalf of the  
21 Committee. Mr. Scannell and Mr. Moore are here to tell me what  
22 to say.

23 THE COURT: I appreciate that. We should all have  
24 some of those.

25 MR. MURPHY: Your Honor, Frasher Murphy with Haynes

1 and Boone for UMB Bank, the DIP lender and bond trustee. With  
2 me here today from the Mintz firm, we have Dan Bleck, Eric  
3 Blythe, and Emily Musgrave. And I believe appearing by WebEx,  
4 we also have Caty Hill.

5 THE COURT: Oh, excellent. Thank you.

6 MR. MURPHY: Thank you.

7 And, Your Honor, I should clarify. We're -- those  
8 announcements and appearances are for both the main case and  
9 the adversary proceeding.

10 THE COURT: I appreciate that. Thank you.

11 Good morning.

12 MR. WALKER: Good morning, Your Honor. Eric Walker  
13 from the law firm of Perkins Coie on behalf of Lifespace  
14 Communities appearing in the main bankruptcy case.

15 THE COURT: Good morning. Welcome.

16 MS. LAMBERT: Good morning. My name's Lisa Lambert.  
17 I represent William Neery (phonetic), the United States  
18 Trustee. I'm appearing on the case in chief matters.

19 THE COURT: Good morning.

20 MS. VANDESTEEG: Good morning, Your Honor. Elizabeth  
21 Vandesteeg, Elleen Sethna, and Harold Israel of Levenfeld  
22 Pearlstein, as well as Michael Held of Jackson Walker on behalf  
23 of Intercity Investment Properties, Inc., in the bankruptcy  
24 proceeding and on behalf of both adversary defendants,  
25 Intercity Investment Properties, Inc., and Kong Capital, LLC,

1 in the adversary proceeding.

2 THE COURT: Good morning.

3 Is there anyone else in the courtroom that would like  
4 to make an appearance?

5 (No audible response)

6 THE COURT: All righty. Now with the Court's  
7 apologies, we were not able to access the electronic roll this  
8 morning, and so I'm now going to take appearances on WebEx.

9 Is there anyone that hasn't been announced for --

10 MR. WILLIAMS: Good morning, Your Honor.

11 THE COURT: Please.

12 MR. WILLIAMS: Good morning, Your Honor. Benton  
13 Williams on behalf of Pamela Siviglia and the Estate of  
14 Patricia Adams appearing on the bankruptcy cases.

15 THE COURT: Good morning, Mr. Williams.

16 MR. WILLIAMS: Good morning.

17 THE COURT: Is there anyone else who wishes to make  
18 an appearance on WebEx? If you're on the phone, you can press  
19 \*6 to unmute.

20 MS. GOODMAN: Good morning, Your Honor. Susan  
21 Goodman, the healthcare ombudsman. I'm just listening along to  
22 make sure I understand the dynamics in the bankruptcy case.

23 THE COURT: Good morning, Ms. Goodman. Thank you  
24 very much.

25 Would anyone else like to make an appearance this



1 morning?

2 (No audible response)

3 THE COURT: And while I have you, it slipped my mind.  
4 We also have another separate adversary on for today. Case  
5 Number 22-3073. Is there anyone who hasn't already made an  
6 appearance that would like to make an appearance in that  
7 matter?

8 MR. SCANNELL: Tom Scannell for the Committee, Your  
9 Honor.

10 THE COURT: Thank you.

11 All righty. Obviously, we have a number of matters  
12 on for today. I did have an opportunity to review the agenda.

13 Mr. Johnson, Ms. Green, how would we like to proceed  
14 today?

15 MR. JOHNSON: Just quickly, Your Honor, I think as a  
16 brief overview of what to expect. We have several matters to  
17 resolve. I think on top -- at the top of our agenda, we'd like  
18 to sort of knock those out. We think they're relatively non-  
19 controversial. It will only take a little bit of time.

20 And then I think, Your Honor, we have two major  
21 contested matters in the Chapter 11 in the main case. I think  
22 we have a -- we think we have a temporary resolution with  
23 respect to the motion to dismiss. We'll discuss it when we get  
24 there. I don't think we're going to need substantial time with  
25 that.

1           We will probably need to find another date for it  
2 while we work out some things, but it was just resolved over  
3 the course of last night and here moments ago. So we'll need a  
4 little time on that.

5           And then I think we're going forward on the  
6 exclusivity side. I think that one is going to go forward. I  
7 think there's going to be a little bit of testimony or there's  
8 a declaration that may just get submitted. I don't know if  
9 there will be cross or what. And I think it's mostly legal  
10 argument on the exclusivity side.

11           And then we'll sort of conclude with the adversary-  
12 related items, I think, with respect to updates on the  
13 discovery and updates on the motions to compel and then the  
14 scheduling issues. So I think that's sort of the roadmap for  
15 today. I think we've at least carved it down substantially,  
16 but I still think we got a little bit of work to do today, so.

17           THE COURT: Excellent.

18           MR. JOHNSON: Thank you, Your Honor.

19           THE COURT: Ms. Green, where should we start?

20           MS. GREEN: Good morning.

21           THE COURT: Good morning.

22           MS. GREEN: We can start on -- I should say for the  
23 record that all of the parties commented on the notice of  
24 agenda, so I think the order of the notice of agenda is going  
25 to work and shouldn't be a problem, but --

1 THE COURT: Well, good. That's how I brought in my  
2 prep. That's excellent.

3 MS. GREEN: Awesome.

4 So the first item on the agenda is the debtors' --  
5 well, the first item on the agenda just for the record is the  
6 disclosure statement. The second item is the motion to approve  
7 the disclosure statement.

8 The Court will recall that at the last hearing,  
9 counsel for UMB Bank, Mr. Bleck, agreed on behalf of his client  
10 to adjourn to a date to be determined. So those matters are  
11 adjourned and not going forward today.

12 Item number three is the debtors' motion to amend the  
13 DIP, it's also by agreement, will be adjourned to the next --  
14 to a date to be determined.

15 And so that takes us to item number four, which is an  
16 uncontested matter. This is the debtors' motion to extend the  
17 civil action deadline. At the last hearing, the Court asked  
18 counsel -- me -- whether we had provided notice of the motion  
19 and notice of the hearing to the litigation parties on  
20 Attachment 7 to the statement of financial affairs.

21 I wasn't able to confirm for the Court, but I can  
22 confirm and represent at this time that those parties have  
23 received notice, ample notice, of both the motion and the  
24 notice of hearing. And for the record, the applicable  
25 certificates of service are Dockets Number 452, 633, and 598.

1 THE COURT: Excellent.

2 Does anyone wish to be heard with respect to the  
3 debtors' motion to extend the time to file notices of removal  
4 of civil actions?

5 (No audible response)

6 THE COURT: All righty. And I haven't seen any  
7 objections on the record. Is that correct, Ms. Green?

8 MS. GREEN: Correct.

9 THE COURT: Okay. Excellent.

10 I did have an opportunity to review the form of  
11 order, and I find it to be in good form. So the Court will  
12 grant the motion for an extension of time with respect to  
13 removal actions.

14 MS. GREEN: Thank you.

15 Item number five is the motion for an order  
16 authorizing the debtors to retain experts.

17 On August 24th, the Court heard this morning. There  
18 were objections filed by the Committee and the United States  
19 Trustee. Since then, the parties pursuant to court order have  
20 served notice of the experts that they intend to retain and  
21 have indeed retained through engagement letters that were  
22 attached to the notice.

23 In response to those notices, the debtors received no  
24 formal objection but did receive informal comments from the  
25 United States Trustee. Ms. Lambert and I had the opportunity

1 to exchange emails and reach an agreement in principle as it  
2 relates to indemnification provisions and a limitation on  
3 liability. And the particular expert, B. Riley, is okay with  
4 the changes. We're just working through the language.

5 THE COURT: Okay.

6 And so otherwise, the form of order, is that what you  
7 originally attached?

8 MS. GREEN: So the form of order attached to the  
9 motion is what we're working with.

10 THE COURT: Working on, okay.

11 MS. GREEN: And we had looked to the order that was  
12 entered with respect to Ankura's retention application for  
13 guidance.

14 THE COURT: Okay.

15 MS. LAMBERT: It was my understanding that they had  
16 withdrawn the request all together for the indemnification and  
17 the limitations. I think it presents a conflict for an expert.

18 MS. GREEN: And that is correct. The order will  
19 reflect the language that satisfies the U.S. Trustee to that  
20 extent.

21 THE COURT: Okay.

22 MS. LAMBERT: That is our agreement, Your Honor.

23 THE COURT: Okay. Thank you. Thank you very much.

24 All right. So I'll look for that order in my box.

25 Otherwise, all of the objections are now resolved?

1 MS. GREEN: That is my understanding.

2 MR. McCARTIN: I think the original motion, Your  
3 Honor -- is this okay? Can you hear me?

4 THE COURT: You'll either need to lean in or come to  
5 the podium.

6 MR. McCARTIN: Sure.

7 THE COURT: We do have a problem hearing from the  
8 mics if you're too tall.

9 MR. McCARTIN: I think this original motion was, I'm  
10 paraphrasing, application to retain undisclosed experts on  
11 undisclosed compensation basis. We objected, and I think we've  
12 resolved that by the debtor now agreeing to file specific  
13 applications to retain and name the expert and what they're  
14 going to do.

15 So I don't think that motion gets granted. I think  
16 it's being, if you will --

17 THE COURT: Mooted?

18 MR. McCARTIN: -- mooted because they're going to  
19 file individuals motions and disclose the name of the expert  
20 and the amount of comp or the proposed comp. That's my  
21 understanding.

22 MS. GREEN: That is not my understanding.

23 THE COURT: All righty.

24 MR. McCARTIN: Well, we still object.

25 THE COURT: Okay. So have all of the experts been --

1 all of the experts have been disclosed, correct?

2 MS. GREEN: Yes. So just for a little --

3 THE COURT: And on an unsealed basis?

4 MS. GREEN: Yes.

5 THE COURT: Okay. So we can talk turkey. There we  
6 go.

7 MS. GREEN: First, we complied with the Court's  
8 initial ruling on August 24th by providing unredacted notice of  
9 disclosure to UMB, to the Committee, and to the United States  
10 Trustee. And thereafter, the seal was lifted and all parties  
11 have now seen the full disclosures including engagement  
12 agreements.

13 THE COURT: Okay. And I'm happy to look through the  
14 docket, but is there more than one expert than B. Riley? I  
15 seem to recall there was one more.

16 MS. GREEN: Yes.

17 THE COURT: Okay. And, again, they all -- nothing's  
18 under seal anymore, correct?

19 MS. GREEN: No.

20 THE COURT: Okay. I don't --

21 MS. GREEN: I appreciate that.

22 THE COURT: What I see is not what you guys see, so  
23 -- before I disclose. So --

24 MS. LAMBERT: The other expert, Your Honor, was FTI  
25 so they had already been retained.

1 THE COURT: Correct. Correct.

2 I mean I must ask, Ms. Green, are we going to do a  
3 retention order for B. Riley or are we going to employ B. Riley  
4 under this order?

5 MS. GREEN: Employ B. Riley under this order.

6 The motion requested authority to retain experts.

7 THE COURT: Right.

8 MS. GREEN: Yeah. And so, Mr. McCartin, if we know  
9 who we're going to employ and we know what the engagement is,  
10 is there still an objection or are you just asking for  
11 specificity in the order rather than something blanket?

12 MR. McCARTIN: Right. We're fine with B. Riley, and  
13 we're fine with the structural engineer that was disclosed name  
14 and comp.

15 THE COURT: That's the other expert I was thinking  
16 of.

17 MR. McCARTIN: Our concern is the motion seemed to be  
18 open-ended. And what we wouldn't want is three weeks from now  
19 the debtor to hire another expert without coming back to the  
20 Court and disclosing the name and the compensation and  
21 obtaining permission.

22 We object to what we perceived as let us go hire  
23 whatever experts we want on whatever terms we want. And that's  
24 what we were objecting to. We're fine with the two that have  
25 been disclosed.



1 MS. GREEN: I think there's an easy fix. If we  
2 intend to retain additional experts, we can provide notice just  
3 as we did before.

4 THE COURT: Ms. Lambert?

5 MS. LAMBERT: Well, Your Honor, I think the other  
6 tailoring that could occur is if the order is granted in  
7 accordance with the terms that the Court imposed at the interim  
8 hearing. We all know that there has to be a notice procedure,  
9 and we all are on the same page about what happens if  
10 subsequent experts are retained.

11 THE COURT: Ms. Green?

12 MS. GREEN: I have nothing further.

13 THE COURT: All righty.

14 All right. For purposes of the record, the Court  
15 will grant -- excuse me, will authorize the retention of -- I  
16 am blanking on the name of the structural assessment --

17 MR. JOHNSON: Your Honor, actually, you might want to  
18 clarify that.

19 THE COURT: Jazerinac or --

20 MR. JOHNSON: Yeah, you may want to clarify that.

21 So this is -- I think it's gotten a little confusing.  
22 This motion here relates to experts involved with the adversary  
23 proceeding.

24 THE COURT: Okay.

25 MR. JOHNSON: So the two experts involved in the

1 adversary proceeding are on behalf of the debtors are B. Riley  
2 and FTI.

3 THE COURT: Okay.

4 MR. JOHNSON: Jezerinac was a separate application.  
5 They were --

6 THE COURT: Was approved.

7 MR. JOHNSON: That was already approved. You entered  
8 the order. There was no objection to that order. That's the  
9 structural engineer.

10 THE COURT: Okay.

11 MR. JOHNSON: That has nothing to do with the  
12 adversary directly. That has to do with the main case, so  
13 Jezerinac has sort of already been done and resolved in the  
14 ordinary course. This was just -- this sort of -- it's a  
15 little bit different because it's an expert witness and --

16 THE COURT: Okay.

17 MR. JOHNSON: -- for the adversary. So it's a little  
18 confusing with all the experts.

19 THE COURT: All right. So your two experts are FTI  
20 already employed. Is there -- are there differing engagement  
21 terms for FTI's role as an expert in the adversary?

22 MS. GREEN: No.

23 MR. JOHNSON: No.

24 MS. GREEN: No, Your Honor.

25 THE COURT: No, okay. So already employed.

1           So under this motion, you're employing B. Riley. So  
2 let's make the order specific to say who we're employing and,  
3 obviously, refer to the terms of the engagement on the now  
4 unsealed notice with any changes that you've agreed to with the  
5 United States Trustee.

6           To the extent that the debtor, and you can include  
7 this in the order. To the extent that the debtor seeks to  
8 retain further experts for purposes of the adversary, it will  
9 follow the notice process that we utilized for essentially --  
10 for this motion or what was essentially used for B. Riley. And  
11 if there is any reason that you would like to seal that, we'll  
12 go through the same process where it's disclosed to the  
13 Committee and to the United States Trustee and I think to UMB  
14 was -- were the three parties under the hood.

15           MS. GREEN: Thank you. That makes sense to me.

16           THE COURT: All righty.

17           So for sake of the record, Docket 538, debtors'  
18 motion for entry of order authorizing debtors' retention of  
19 experts is granted as more fully explained on the record.

20           MS. GREEN: Okay. Your Honor, I apologize. I had to  
21 pull the amended witness and exhibit list or actually --

22           THE COURT: Take your time.

23           (Pause)

24           MS. GREEN: Okay. So --

25           THE COURT: I don't know if there was an amended one.

1 I'm looking at Docket 655. But I can follow you no matter  
2 where you go.

3 MS. GREEN: The next item on the agenda is the motion  
4 to dismiss the cases.

5 THE COURT: Right.

6 MS. GREEN: As Mr. Johnson announced, we will be  
7 adjourning the motion to dismiss the cases to a date to be  
8 determined but most likely October 5th.

9 THE COURT: October 5th I don't believe is going to  
10 be sufficient to hear it.

11 MS. GREEN: Okay. To be determined.

12 THE COURT: Oh, okay. There will be time on October  
13 5th but not time for a contested hearing on a motion to dismiss  
14 the bankruptcy.

15 MS. GREEN: The next item on the agenda I believe is  
16 the motion for --

17 MS. VANDESTEEG: Hold on, hold on.

18 MS. GREEN: Oh, my bad.

19 MS. VANDESTEEG: If I may, Your Honor?

20 On the motion to dismiss, Your Honor -- and for the  
21 record, Elizabeth Vandesteeg on behalf of Intercity Investment  
22 Properties, Inc.

23 Your Honor, before we simply adjourn, I do have some  
24 updates to provide to the Court on the motion to dismiss that I  
25 think are important for the Court to know in terms of how we

1 got to where we are and what the proposed plan is with respect  
2 to any adjournment.

3 THE COURT: Okay. So do you want to do that now or  
4 do you want to take up some of the smaller motions if --

5 MS. GREEN: It was my hope to take up the smaller  
6 motions, but I can do either. Whatever the Court prefers.

7 THE COURT: Why don't we take up the smaller motions,  
8 Ms. Vandesteege, and then we'll have a more fulsome  
9 presentation.

10 MS. VANDESTEEGE: Thank you, Your Honor. I just  
11 didn't want to pass on that.

12 THE COURT: Fair enough.

13 MS. GREEN: I am finally where I am supposed to be.  
14 I have a notice of amended agenda in front of me.

15 THE COURT: All righty.

16 MS. GREEN: Winning.

17 Okay. Item number seven is the motion for an order  
18 authorizing the Committee to offer an exhibit under seal.

19 And --

20 MR. McCARTIN: And, Your Honor, that may or may not  
21 become moot as we go through our --

22 THE COURT: That's why I said it rather than --

23 MR. McCARTIN: Right.

24 THE COURT: -- basically awaiting for orders is my  
25 question was whether or not we would still need it.

1 MR. McCARTIN: Yeah. I'm 95 percent sure it's going  
2 to be moot, so we might carry that to the end of the day and  
3 see if we can withdraw it.

4 THE COURT: That's fair enough.

5 Ms. Lambert, anything with that announcement?

6 MS. LAMBERT: No, Your Honor. The United States  
7 Trustee still has not seen the document despite requesting it  
8 from the debtors. So I'm still having the same problems, which  
9 is unprecedented in the 20 years that I've been doing this job  
10 that I don't get documents that are subject to a motion to seal  
11 in a case. We're representing the public and the public is  
12 very interested as reflected by the news articles. I can't  
13 represent their interest.

14 THE COURT: Okay. Thank you very much, Ms. Lambert.  
15 Mr. Johnson?

16 MR. JOHNSON: I'd note, Your Honor, the document that  
17 -- the motion to put something under seal was filed by the  
18 Committee. And if there's something that they want to put  
19 under seal and they want -- Ms. Lambert wants to see it, she  
20 should get it from them. It is a document we gave them  
21 originally.

22 I guess perhaps I missed the request, and I  
23 apologize. But this is -- we're sort of in the same situation  
24 we were before, but I don't know why this is becoming an issue.  
25 I'm a little confused by the statement.

1 MS. LAMBERT: The discovery agreement between the  
2 Committee and the debtor requires apparently, which I haven't  
3 seen either, requires the Committee to file a motion to seal  
4 for documents that they receive under a confidentiality  
5 agreement.

6 So they have the confidentiality agreement, so they  
7 tell me to go to the debtor. The debtor then sees now go to  
8 the Committee.

9 MR. JOHNSON: I apologize, Your Honor.

10 MS. LAMBERT: And this has happened twice.

11 MR. JOHNSON: This is the first time I'm -- maybe I  
12 missed an email, but I think this is the first time hearing it.  
13 We have no problem giving a copy of the confidentiality  
14 agreement we signed with the Committee to Ms. Lambert, nor do  
15 we have any problem giving her the document that the Committee  
16 -- is the subject to the Committee's motion to put under seal.

17 It's a draft budget, Your Honor, like we had earlier  
18 in the case. That's what we're talking about is a draft  
19 budget. And so it doesn't contain any particularly bombastic  
20 information, so there's no problem handing it to her. And  
21 we'll see if that become relevant. We'll get Ms. Lambert a  
22 copy of the confidentiality agreement that was signed.

23 MS. LAMBERT: Your Honor?

24 THE COURT: I understand -- oh, please.

25 MS. LAMBERT: Yesterday there were emails between me

1 and Ms. Green where she said she needed to talk to Mr. Johnson.  
2 Then she emailed back that she had talked with Mr. Johnson and  
3 that the documents were draft budgets. But the draft budgets  
4 were not provided to the United States Trustee.

5 And the issue to the United States Trustee is we're  
6 farther in the case than we were in the first instance. Their  
7 projection's in the disclosure statement. And how much  
8 difference is there in these things? And now I don't know that  
9 we're going forward. Perhaps it's moot. But the first is not  
10 --

11 THE COURT: Well, I think the process is not moot,  
12 though.

13 MS. LAMBERT: Right. Exactly.

14 MR. McCARTIN: From our standpoint, Your Honor, we're  
15 -- again, we signed a non-disclosure agreement. We believe too  
16 many things are marked confidential. We think everything's  
17 secret in the case. But our NDA didn't allow us to hand  
18 confidential information to the U.S. Trustee.

19 THE COURT: I get it. You're Switzerland.

20 MR. McCARTIN: I'm happy to hand it to her if I could  
21 get the debtor to say it was okay. I heard last time their  
22 concern was if I give it to the U.S. Trustee, the U.S. Trustee  
23 is not under a confidentiality agreement and I guess could hand  
24 it to The Dallas Morning News. I thought that was the debate.

25 MS. LAMBERT: It is true that the United States



1 Trustee cannot enter a confidentiality agreement. The United  
2 States Trustee is subject to court orders. If they want to  
3 file a court order and put us under that, that's fine. But in  
4 this particular context, the United States Trustee had said we  
5 would keep it confidential until the Court ordered the release.

6 And, Your Honor, there should be no -- we have  
7 standard provisions that we put in the orders on sealing that  
8 specify that any -- Section 107 contemplates that documents can  
9 be shared with the United States Trustee, but we standardly put  
10 in provisions that if any documents are exchanged which trigger  
11 ethical or statutory obligations, then the documents can be  
12 shared.

13 I don't want the confidentiality agreements that the  
14 Court has not seen and the United States Trustee has not seen  
15 to be used as an insulation from those obligations.

16 THE COURT: Thank you, Ms. Lambert.

17 Mr. Johnson?

18 MR. JOHNSON: Your Honor, we can work on this and  
19 figure this out. And, again, I think this has become a little  
20 bit too confusing. We did have a request from Ms. Lambert to  
21 show a variance report that we used for the budget for the  
22 budgeting process to the PCO. We said that that was fine that  
23 they could share it with the patient care ombudsman.

24 I don't -- maybe we did not get back to her on the  
25 budget issue. We will. We can give her a copy of the draft

1 budget. Again, Your Honor, you know, we didn't sort of create  
2 this issue. You know, we don't even think this draft budget's  
3 relevant. We don't think it's ever going to be relevant. It  
4 may not be -- it wouldn't be relevant if we were going forward  
5 with the hearing, Your Honor. But that's a different set of  
6 issues.

7 That being said, we can work on this and try and  
8 avoid this issue ever having to come before you again in the  
9 case. We apologize, and we'll figure it out.

10 THE COURT: Thank you, Mr. Johnson.

11 Mr. McCartin?

12 MR. McCARTIN: Yeah. My colleagues tell me we sent  
13 an email on Tuesday to debtors' counsel asking for permission  
14 to give this document to the U.S. Trustee, and they're saying  
15 U.S. Trustee won't sign a non-disclosure agreement but agreed  
16 to keep it confidential. So --

17 THE COURT: Well, I think if it's subject to a motion  
18 to seal and it's being provided to the United States Trustee,  
19 both by operation of law and by Ms. Lambert's presentation at  
20 the podium, the United States Trustee will not disclose it  
21 while there is a pending motion to seal. And especially if it  
22 is sealed.

23 Am I misstating anything, Ms. Lambert?

24 MS. LAMBERT: No, Your Honor. That is accurate.

25 THE COURT: Okay. Thank you very much.

1 And to the extent that it wasn't picked up on the  
2 record, Ms. Lambert confirmed that the Court's understanding  
3 was accurate.

4 I understand the Committee's position of we can't  
5 give it to you because it's confidential, and I understand at  
6 least the thought process from the debtors of, well, we thought  
7 that the Creditors' Committee would supply it.

8 But I do believe it is the debtors' assertion of  
9 confidentiality and so once the Committee files a motion to  
10 seal or any party files a motion to seal, it is up to the  
11 debtors to provide the document to the United States Trustee.  
12 And if they're unwilling or unable to do that for some reason,  
13 let's take it before the Court.

14 All righty? But I'm certain it will move more  
15 smoothly going forward. But for now, I understand we'll stick  
16 a pin in the motion to seal based upon the fact that I assume  
17 it was going to be used in connection with the motion to  
18 dismiss presentation. All righty.

19 MR. McCARTIN: Thank you.

20 THE COURT: We're going to get to one of those easy  
21 motions yet, Ms. Green.

22 MS. GREEN: I don't want to say I don't believe you  
23 because that just wouldn't be appropriate.

24 Actually, so we're -- at the end of the agenda for  
25 the bankruptcy cases, the only two items in the bankruptcy

1 cases that remain are the exclusivity and the motion to  
2 dismiss. So I think we just would like some guidance from the  
3 Court as to whether you want to switch to adversary and pick up  
4 those adversary motions that may be a little more simple and  
5 save exclusivity and motion to dismiss for last.

6 THE COURT: Well, although I have, well, never been  
7 described as an eternal optimist, can I assume that the motions  
8 to compel are still not resolved?

9 MR. ENNIS: Yes, you can assume that.

10 (Laughter)

11 THE COURT: Thank you. Thank you very much.

12 MS. VANDESTEEG: That's correct, Your Honor.

13 THE COURT: You know what, I thought maybe we were in  
14 the eye of the hurricane there for a moment.

15 MR. McCARTIN: I had one suggestion, Your Honor.

16 I understand that we do have the motion to dismiss  
17 and exclusivity now kind of pending for discussion that are  
18 contested. The motion to amend the protective order, I  
19 believe, has been resolved also.

20 THE COURT: That's where I was going is we've got the  
21 stipulated protective order, the scheduling order, and the  
22 agreed motion to abate the scheduling order, although you guys  
23 have tricked me with agreed motion before.

24 I think one of those three might be next.

25 MS. GREEN: Thank you.

1 THE COURT: You're welcome.

2 MR. SWITZER: Your Honor, Jay Switzer on behalf of  
3 the plaintiff in the adversary proceeding.

4 With respect to the protective order, I had  
5 circulated a revised order which I had thought had resolved the  
6 issues among the Committee. We filed an objection, addressed  
7 issues regarding the bond trustee in terms of their ability to  
8 get documents under the order. And then we learned late last  
9 night that the defendants apparently have got some new issues  
10 they have with respect to the order that we have not yet seen.

11 We were -- there was an indication that we would see  
12 some language to address that issue. We have not yet seen it.  
13 So we're not there yet, but hopefully that's something that can  
14 be resolved in short order so we can get that order entered and  
15 start facilitating the production of information to the  
16 parties.

17 THE COURT: Does it make sense to hear from the  
18 defendants, then perhaps we can --

19 MR. SWITZER: Yes.

20 THE COURT: -- you guys can work it through on a  
21 break, maybe? Maybe.

22 MS. VANDESTEEL: Elizabeth Vandesteel, Your Honor,  
23 for the record.

24 Yes. Counsel's representation is correct. As I was  
25 reviewing the most recent potentially final version of a

1 redline that had been circulated yesterday, there are a couple  
2 of provisions with respect to "Attorneys' Eyes Only"  
3 information that I'm concerned have shifted as we have evolved  
4 the language to include more parties that I think need to be  
5 further narrowed just for that particular subset of  
6 information.

7 I had hoped to be in a position to circulate new  
8 language ahead of the hearing this morning and simply was  
9 unable to do so, Your Honor. I do suspect that my proposed  
10 modifications, the defendants' proposed modifications are  
11 minor, and I do hope that at break at some point over the  
12 course of today, we will have the opportunity to sit down with  
13 the other parties in interest and get that language locked  
14 down.

15 We certainly do not have any objection to the spirit  
16 and intent, Your Honor, of this amended protective order. We  
17 just need to tweak that specific language on "Attorneys' Eyes  
18 Only" information.

19 THE COURT: Thank you very much, Ms. Vandesteeg.

20 All right. Mr. Switzer.

21 MR. SWITZER: (Indiscernible) language. I'm hopeful  
22 that we can resolve this and put into bed.

23 THE COURT: Excellent. Thank you very much.

24 MR. SWITZER: Then with respect to the other two  
25 matters up in the adversary, Your Honor, Mr. Ennis will be

1 handling the motions to compel to provide an update there.

2 With respect to the scheduling order, as we indicated  
3 at the last hearing, until the motions to compel are resolved  
4 and we have a better sense of the timing, again, I think it's  
5 premature to have an ordered entered.

6 And so my expectation is that we will continue that  
7 motion along with the motions to compel either to a date next  
8 week or the week after, depending on the ebb and flow of the  
9 discussion regarding the status of those motions. And then  
10 once we have clarity on the motions to compel, then hopefully  
11 we'll be able to finalize a form of order among the parties and  
12 seek to have that entered.

13 THE COURT: Okay. Thank you very much, Mr. Switzer.

14 So, if you -- you were going to approach, Mr. Ennis?

15 MR. ENNIS: If you want to take up the motions to  
16 compel now, I can do that or if you want to pause.

17 THE COURT: Let me see if the agreed motion to abate  
18 is still agreed.

19 MR. SCANNELL: Tom Scannell for the Committee, Your  
20 Honor.

21 It is, indeed. And it's going to my suggestion if it  
22 pleases the Court to take up this brief announcement before we  
23 get up to the matters that remain unresolved.

24 THE COURT: Please.

25 MR. SCANNELL: Your Honor, this is an adversary

1 proceeding filed by the Committee as it's challenged under the  
2 final DIP order. We're here today on the agreed motion to  
3 abate the default scheduling order entered in the adversary.

4         The Committee and the pre-petition bond trustee are  
5 the only parties to the adversary. Both parties have agreed to  
6 press pause on the litigation while they continue good-faith  
7 negotiations to hopefully resolve the matter. And the thinking  
8 here is that the issues in this adversary may get resolved as  
9 the bigger picture in the main bankruptcy case plays out.

10         And this will allow the parties to do two things at  
11 this point: Number one, focus their attention on the larger  
12 case dispositive issues and, number two, avoid spending  
13 unnecessary funds at this time. The proposed form of order was  
14 filed as Exhibit 1 to the motion. It is included as Exhibit 29  
15 in the Committee's exhibit booklet for the Court's reference.

16         Just a brief explanation of what the order will do.  
17 All deadlines including the bond trustee's answer deadline  
18 under the current default scheduling order and the case would  
19 be abated pending further notice of the parties. And at any  
20 time, either party may unilaterally terminate the abeyance by  
21 filing a motion with the Court notifying the Court that the  
22 abeyance should be terminated and requesting the entry of a new  
23 scheduling order to replace the abated scheduling order.

24         And upon the entry of that new scheduling order, the  
25 abeyance would be terminated and the new deadlines under the



1 scheduling order including a trial docket call would control  
2 the proceedings going forward from that point.

3 In the alternative, if the adversary gets resolved  
4 during the abeyance period, the parties would file a status  
5 report with the Court along with a motion to dispose of the  
6 adversary and dismiss the case, so either a motion to approve  
7 settlement or motion to dismiss.

8 And our thinking here is so that either way the  
9 abeyance period will expire, whether by litigation or by  
10 settlement. The parties will keep the Court apprised on which  
11 of those paths are chosen by the parties and will provide the  
12 Court with either new controlling deadlines or a dispositive  
13 motion to remove the case from the Court's docket.

14 And, again, this is to provide the clerk's office  
15 with some comfort that it won't have this adversary loitering  
16 on its docket in perpetuity without a protocol to dispose of it  
17 in due course.

18 The agreed motion was filed on August 9th. There  
19 have been no responses or objections to the motion. All  
20 parties to the adversary have agreed to the proposed form of  
21 order attached as Exhibit 1 to the motion. The motion is ripe  
22 to be granted at this time. I'm happy to answer any questions  
23 the Court may have.

24 THE COURT: Well, thank you very much, Mr. Scannell.  
25 Before I ask any questions, does anyone else wish to be heard

1 with respect to the agreed motion to abate?

2 Mr. Bleck?

3 MR. BLECK: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. BLECK: I think this is going to be hopefully  
6 simple with this particular motion. But we do agree with the  
7 proposed form of order as Mr. Scannell said. It is an agreed  
8 form of order. We do believe that it's appropriate here to see  
9 if we can defer any additional costs and expenses with respect  
10 to this particular issue and hopefully will get resolved in the  
11 larger scheme of the case.

12 THE COURT: Thank you very much.

13 MR. BLECK: Thank you.

14 THE COURT: Is there anyone else who wishes to be  
15 heard?

16 (No audible response)

17 THE COURT: All righty. I did have an opportunity to  
18 review the motion and the proposed form of order prior to the  
19 hearing. I don't have any comments to the order other than  
20 typically when I abate an adversary, I establish a status  
21 conference date out into the future just so the parties can  
22 come and say whether we want to stay in abatement or if we want  
23 to essentially just give the Court an update on where things  
24 are.

25 So if you would get a status conference date from

1 Settings and add that to the order, I'm happy to sign it.

2 MR. SCANNELL: Great.

3 MR. BLECK: Will do. Thank you, Judge.

4 MR. SCANNELL: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. SCANNELL: Thank you.

7 THE COURT: All right. Does it make sense to talk  
8 adversary or are we going to be releasing the litigators or  
9 should we turn to the motion to dismiss? I want to be  
10 respectful of folks' time.

11 MR. JOHNSON: Yeah. That makes more sense, Your  
12 Honor, I think.

13 THE COURT: Okay.

14 MR. ENNIS: Good morning, Your Honor. Andrew Ennis  
15 for the adversary plaintiff.

16 Just a brief update on the status of our --  
17 plaintiff's motion to compel. We have filed in conjunction  
18 with this hearing Exhibits FF and GG. Both are filed under  
19 seal out of an abundance of caution. FF is the defendant's  
20 privilege log. GG is a summary and then excerpts from that  
21 privilege log. And GG is really the focal point of my  
22 presentation today because it outlines for the Court sort of  
23 the number of documents at issue and the various time frames  
24 and buckets that we've talked about over the last couple of  
25 hearings.

1 I'm letting you get to the --

2 THE COURT: Thank you very much. I appreciate that.

3 MR. ENNIS: -- the various binders. Sorry we do this  
4 to you every time.

5 THE COURT: All righty. Am I turning to FF or GG?

6 MR. ENNIS: GG, please.

7 THE COURT: All righty.

8 MR. ENNIS: And hopefully your copy printed in a way  
9 that is readable. If not, I have a bigger version that I can  
10 provide.

11 THE COURT: Reading I can do. Distance I cannot, so  
12 we're good. (Laughs)

13 MR. ENNIS: Good.

14 So the first page of Exhibit GG is just a summary  
15 that we prepared of the documents that fit into the various  
16 buckets that we've talked about. And we've broken it down and  
17 then within GG, there were -- it was an actual, a spreadsheet  
18 with different tabs. And we've tried to just label the tabs  
19 within the document that printed out.

20 But it goes through the internal Kong communications  
21 that are just individuals employed by Kong talking to one  
22 another, then the Intercity and Kong communications, both of  
23 those without any counsel present. And then there's a separate  
24 grouping of any correspondence that involved Kong and counsel.  
25 Typically, an overwhelming majority of the cases, Intercity's

1 counsel were on those communications.

2 And so we've outlined and then by time frame the  
3 different whether it's work product, whether it's could be  
4 attorney-client privilege or whether it could be common  
5 interest based on the various assertions.

6 If you look at the log, we have this layered approach  
7 with the chart that we've talked about over time. It is not  
8 the case where everything after the new -- you know, so we have  
9 work product starting December 13th and then you have the  
10 January 10 letter and then that's a new attorney-client  
11 privilege date.

12 It is not the case that everything after January 10th  
13 then is both. You know, they're applying different privileges  
14 at different times based on obviously the content of the  
15 communication. So what we've tried to do is use those as kind  
16 of benchmark hallmarks. But at the end of the day, the second  
17 box on our summary shows the numbers of documents that we think  
18 are appropriate for the Court's in-camera review. And there's  
19 really three categories there.

20 We have what we flagged earlier which was the  
21 communications before the December 13th engagement that we  
22 thought were being produced, but there are 48 documents in that  
23 window leading up to the engagement. And we think those 48 --

24 THE COURT: Well, okay, wait. I think I don't  
25 understand --

1 MR. ENNIS: Okay.

2 THE COURT: -- Mr. Ennis. So I'm looking -- I'm  
3 trying to make this summary match up to the review priority.  
4 So in the summary, you've got documents -- oh, I see now. I  
5 see. There's multiple layers of --

6 MR. ENNIS: Right.

7 THE COURT: -- of before 12, 13.

8 MR. ENNIS: Yes.

9 THE COURT: I see that now.

10 MR. ENNIS: Yes.

11 THE COURT: I see how you can get to 48 now because I  
12 thought it was --

13 MR. ENNIS: Right.

14 THE COURT: I thought they were in date order, but  
15 they're in categorical order. Thank you very much.

16 MR. ENNIS: Yeah. And I have row numbers in the  
17 second box. But there's no row numbers on the document, so  
18 that's less helpful if you're not looking at the actual  
19 spreadsheet. But --

20 THE COURT: Sure.

21 MR. ENNIS: -- there are -- so there are 48 emails,  
22 22 that are internal Kong emails, 25 that are Intercity and  
23 Kong back and forth and then one that involves counsel in that  
24 pre-December 13th --

25 THE COURT: Sure.

1 MR. ENNIS: -- category. So those we would submit  
2 would be a -- first of all, it's a discrete finite number of  
3 documents, a manageable number of documents for the Court's  
4 review. We also think communications in that pre-engagement  
5 window will likely provide a good sense for the Court of the  
6 nature of the relationship between ICI and Kong. And so we  
7 would submit that those 48 are sort of a starting point for the  
8 Court's in-camera review.

9 The next category is Kong communications after that  
10 December 13th engagement that don't involve counsel. There's a  
11 bigger number there, 374. Our hope is that what we would like  
12 to do is submit or have the defendants provide that entire set  
13 for the Court's review. Our hope is that because these are  
14 emails, that they will be short documents. You know, one- or  
15 two-page documents.

16 And our guess just based on experience is that there  
17 will be email chains. I don't know how much de-threading and  
18 de-duping was done, but my guess is there will be overlap among  
19 that 374 --

20 THE COURT: Sure.

21 MR. ENNIS: -- documents that would probably make the  
22 Court's review somewhat quicker because it will just be an  
23 additional email on an existing chain.

24 And then beyond that, we have the emails that involve  
25 both Kong and counsel. And in that set, there was 566 of those

1 documents. We have suggested a sample of 230. We didn't just  
2 pull that number out of the air. We did some -- well, the  
3 internet did some math for me on the statistically significant  
4 sample set of 566 documents. And it's about 230 that would  
5 give you a representative sample.

6 So that's a total of 652 documents that we are hoping  
7 that we can deliver to the Court for review of some or all of  
8 those documents as it reaches a decision on the various  
9 privilege issues raised in our motion to compel.

10 Our thought is that it should be a fairly automated  
11 process for the defendants to isolate those documents and  
12 deliver them to the Court in whatever form the Court would like  
13 them, whether that's electronically or in printed out physical  
14 documents, and that that can probably be done in a matter of  
15 days.

16 And then our suggestion would be that we go ahead and  
17 just push forward with that, you know, as soon as early next  
18 week and then perhaps set a status, further status on our  
19 motion to compel in mid-October, maybe the week of October 10th  
20 to come back, see where the Court is in the process, see if  
21 we're closer to a ruling on those issues, and go from there.  
22 But we think because we put this all together and we have  
23 identified these documents, that we can move this part of it  
24 forward quickly.

25 THE COURT: Thank you, Mr. Ennis.



1 MR. ENNIS: Thank you.

2 Ms.Vandesteeg?

3 MS. VANDESTEEG: Thank you, Your Honor.

4 For the record, Elizabeth Vandesteeg on behalf of  
5 both adversary defendants in the adversary proceeding.

6 Your Honor, I'm a bit surprised that this is what the  
7 plaintiff is seeking today. It was my understanding and  
8 takeaway from when we were here in front of the Court last week  
9 that there were several different issues in play on these  
10 motions to compel involving all three of the parties at issue,  
11 Your Honor.

12 We had issues with respect to the debtor plaintiffs'  
13 privilege log that had been provided to us in that there did  
14 not appear to be appropriate designation with respect to  
15 documents that the debtor plaintiff wanted to designate as  
16 common-interest privilege. We were in agreement that the  
17 debtor would provide an amended privilege log to us by no later  
18 than Monday. It has been provided. As Your Honor may recall,  
19 that privilege log included about 4,100 entries.

20 We had also proposed then that the adversary  
21 defendants, the plaintiff, and UMB have the opportunity to have  
22 a three-way conversation. Your Honor, we have provided our  
23 privilege log to UMB. They reminded us of that, and we sent  
24 that to the earlier this week. But as Your Honor indicated  
25 last week, there have been a number of other moving pieces

1 leading up to today, and we have not yet had the opportunity to  
2 sit down and have that conversation which we intend to do with  
3 both debtors and UMB around issues of common interest.

4           Your Honor, it was my understanding further that once  
5 we had had the opportunity to have that conversation and suss  
6 out some of the intricacies of how the different parties are  
7 viewing and applying common interest, we would then also have  
8 an opportunity to sit down with adversary plaintiffs and help  
9 come together with a scope of what it is that they were seeking  
10 for in-camera review.

11           So, again, I'm just a bit surprised that we are  
12 coming with this information today in terms of what they seek.  
13 Your Honor, we don't have a problem fundamentally with the  
14 Court undertaking whatever in-camera review Your Honor deems is  
15 appropriate under the circumstances. I will further advise the  
16 Court that we on behalf of the adversary defendants took some  
17 of Your Honor's questioning last week in terms of how does one  
18 try to appropriately parse out legal and business  
19 communications particularly where in circumstances such as this  
20 case, the two really may be intertwined.

21           And we have been, Your Honor, going again back  
22 through these very documents that appear on plaintiff's summary  
23 and are attempting to see if there isn't some further voluntary  
24 production that could be made with even more narrow redactions.  
25 And I don't know if it would be helpful for us to then complete

1 that internal process on our part before providing additional  
2 documents for in-camera review that may otherwise be produced.

3 Your Honor, I thought that today was really more of a  
4 status along these lines. And my expectation is that we could  
5 come back again before Your Honor after we've had the  
6 opportunity to have those additional communications both with  
7 plaintiff and with UMB and see if we can't further narrow this  
8 down.

9 THE COURT: Mr. Ennis?

10 MR. ENNIS: Thank you, Your Honor.

11 Our view is, as Mr. Switzer alluded to earlier, the  
12 motions to compel are an important piece of the overall  
13 schedule that we're working on here. And most of what Ms.  
14 Vandesteeg was talking about related to defendants' motions to  
15 compel, the three-way conversation with UMB. That's --

16 THE COURT: Sure.

17 MR. ENNIS: -- the defendants' motions to compel.

18 We had not been advised that there was -- that the  
19 defendants were undertaking the further review of the materials  
20 on their privilege log as it might relate to our privilege log.

21 But our view is and as Your Honor mentioned in the  
22 last hearing, these don't necessarily have to be handled in  
23 lockstep. And because we've identified the universe of  
24 materials that we think are in play here, our goal is just to  
25 get the process going with the Court's in-camera review. And

1 if that is specific to our motion to compel, so be it, while we  
2 hammer out other issues with defendants on their motions to  
3 compel.

4           So our goal here was one of expediency because the  
5 motions have been, you know, on file for a while. We're now  
6 here on our third hearing on the motions to compel. And we're  
7 just trying to get to a decision point on the motions because  
8 these are so critical to our preparation of the case, the  
9 depositions we need to take in the case. We just -- our goal  
10 here is just to move this along.

11           We're obviously always happy to engage with the  
12 defendants if there are areas where we can agree. But, again,  
13 30 seconds ago is the first time I heard that that process was  
14 underway. So --

15           THE COURT: Ms. Vandesteeg? And then I'll go to Ms.  
16 Musgrave and just see if UMB has any position on this, as well.

17           MS. VANDESTEEG: Thank you, Your Honor.

18           Again, for the record, Elizabeth Vandesteeg on behalf  
19 of adversary defendants.

20           Your Honor, I think that we find ourselves in the  
21 difficult position here in court continuing to engage in meet  
22 and confers in front of Your Honor that should have been  
23 happening outside of court. We agree that there is a need for  
24 expediency here, Your Honor. Absolutely.

25           No one is looking to delay. This has been the

1 aggressive schedule the debtors have sought from the outset.  
2 We have been working incredibly diligently to do our very best  
3 to comply. Again, Your Honor, what we're proposing is intended  
4 to further streamline this action.

5 We will handle it however the Court prefers. I do  
6 think that given a little bit more time, again, we would be  
7 able to further narrow the issues here, Your Honor, which I  
8 think would be in everyone's interests. But we are here to  
9 comply with whatever order the Court wishes to enter on this.

10 THE COURT: Okay. Thank you very much, Ms.  
11 Vandesteeg.

12 Ms. Musgrave, anything to add as it pertains to the  
13 motions to compel?

14 MS. MUSGRAVE: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MS. MUSGRAVE: I think that was a long walk up here  
17 to basically say no, but I appreciate the opportunity. I think  
18 from our perspective, we're looking to move this along as  
19 quickly as possible and happy to proceed and facilitate that in  
20 whatever way makes sense to the Court.

21 THE COURT: Thank you very much, Ms. Musgrave.

22 MS. VANDESTEEG: Your Honor, one further point that  
23 we should clarify for the record with respect to UMB is that  
24 the adversary defendants and UMB were able to come to a  
25 resolution and agreement with respect to the supplemental

1 production that UMB is working on. So that process is indeed  
2 in progress which means that the only pending remaining issues  
3 with respect to the adversary defendants' motion to compel  
4 against UMB as it currently stands, Your Honor, are only  
5 related to the common-interest privilege.

6 THE COURT: Okay. All right.

7 MS. VANDESTEEL: Thank you.

8 MS. MUSGRAVE: That's correct. Thank you.

9 THE COURT: Okay. Thank you.

10 Well, what I was doing a minute ago is I'm trying to  
11 pull up -- you guys are supposed to come back here on what date  
12 next week?

13 UNIDENTIFIED COUNSEL: October 5th, Your Honor.  
14 There's a hearing scheduled in the morning of October 5th on  
15 the Committee's motion. That's our next date.

16 THE COURT: That's also Yom Kippur.

17 UNIDENTIFIED COUNSEL: Yes.

18 THE COURT: Is that not going to work for anyone  
19 here?

20 (Court and clerk confer briefly)

21 THE COURT: I know that it was in the works, but let  
22 me look and see if I can -- we do not have the benefit of Ms.  
23 Harden today. She is traveling, and so --

24 MR. MOORE: Your Honor, I think I can shed a little  
25 light on the (indiscernible).

1 THE COURT: Okay. Thank you, Mr. Moore.

2 Yes, I know you had emailed with Ms. Harden. Please.

3 MR. MOORE: So we obviously filed our motion for  
4 authority for the Committee to speak with the landlord. We  
5 requested emergency consideration which -- for today which the  
6 Court did not grant. And then Ms. Harden reached out to ask if  
7 we could agree among the parties on a setting for the week of  
8 the 3rd.

9 We initially requested and talked about the 4th in  
10 the afternoon. We were told that you have a completely full  
11 afternoon blocked that day. Subsequently, we found out that  
12 that may not be true about 3:30 in the afternoon on that day.  
13 But by that point, we had already talked to the parties about  
14 the 5th --

15 THE COURT: Right.

16 MR. MOORE: -- around 9:30 or 10:30 in the morning.  
17 We have conferred with all the parties. My understanding is  
18 that for that matter which should take less than an hour, maybe  
19 less than 45 minutes, we have approval from all the parties to  
20 do a WebEx or hybrid hearing on the morning of the 5th at 10:30  
21 but that just literally came through last night and this  
22 morning about getting all of the cats herded in that direction,  
23 so to speak.

24 THE COURT: Okay. So I now have the 5th up, and I  
25 recall that Ms. Harden had given you different blocks after

1 other hearings.

2 So on the 5th, let me see. And, Ms. Jeng, check me  
3 on this because you know how good I am at reading calendars.

4 I could probably do a couple of hours late morning.  
5 I've got two matters on the docket I think that I'd be done by  
6 10:30. The afternoon of the 5th, I've got two evidentiary  
7 hearings that day. It would be hard to give you the afternoon  
8 time, so I could probably do something late morning.

9 Now, here's where the rubber meets the road. I have  
10 two hours. I don't have four hours. If it carries to the  
11 afternoon, you would be waiting until 4:00. So if we do the  
12 5th, number one, again, it's Yom Kippur so if that's a problem  
13 for anyone, we need to know that now.

14 And then, the 4th, if we were to retool to the 4th, I  
15 have something similar. I have -- well, I have a couple of  
16 hours in the morning and I have a couple of hours at the end of  
17 the day. So my concern was -- oh, maybe I don't have any of  
18 that. Just one moment.

19 (Pause)

20 THE COURT: Okay. So, again, Mr. Moore, with respect  
21 to the hearing that you've requested, I have time.

22 MR. MOORE: Right.

23 THE COURT: My thought is with respect -- is trying  
24 to deal with all of these motions to compel and if we were  
25 going to have additional discussions with respect to those.



1 And so here's my thought process with respect to the  
2 motions to compel. Thank you very much, and then we can talk  
3 about the hearing.

4 MR. MOORE: Sure.

5 THE COURT: I do believe that it probably makes sense  
6 to -- I don't think the parties need to stay in lockstep. I  
7 still believe that.

8 However, before the Court were to start in-camera  
9 review of documents, I would like the parties to, A, see if the  
10 privilege log can be winnowed down at all and then, B, see if  
11 the parties can essentially be presenting me documents at the  
12 same time. If that's not the case, that's not the case.

13 I do believe it would greatly benefit the Courts  
14 overall decision as it applies to the consulting expert  
15 privilege as it pertains to work product, attorney-client, and  
16 common legal interest. And the reason is the Court has been  
17 fearful reviewing the original pleadings of ruling in a vacuum  
18 on common interest and work product and these types of  
19 privileges and then having the parties just come back and say,  
20 well, we still need the Court to take a look at the documents.

21 Please don't get me wrong. The thought of reviewing  
22 discovery gives me a little bit of hives. I applied to the  
23 bench to get away from discovery, but --

24 (Laughs)

25 THE COURT: No, I'm kidding. But at the same time, I

1 do understand in this particular instance why it would probably  
2 be beneficial to the process.

3 So I want to give the parties a little bit more  
4 breathing room, but I also want to be cognizant of whether the  
5 trial date is December, whether the trial date is February,  
6 that's still fairly right, all things considered in terms of  
7 litigation.

8 So what I'd like to do is carry to a hearing next  
9 week, and it doesn't have to be the same day as we hear the  
10 Committee's motion for leave to talk to other folks. So I've  
11 got the 4th and the 5th if you want to come back at one time, I  
12 understand. I'd like to be efficient for the parties. But I  
13 just want the parties cognizant that I don't -- that we're  
14 being serious when we say we only have a couple of hours.

15 Ms. Vandesteeg?

16 MS. VANDESTEEL: Thank you, Your Honor.

17 Elizabeth Vandesteeg for the record.

18 I think what may be helpful to the parties in general  
19 as we proceed through today and determine what remains  
20 unresolved and may require further hearing would simply be  
21 clear guidance from the Court as to what those pockets of  
22 availability are, Your Honor --

23 THE COURT: Okay.

24 MS. VANDESTEEL: -- so that toward the end of the  
25 day, after counsel have had the chance to huddle up once we

1 know what remains unresolved and how much time we think we'll  
2 need, then we can come back to you and let you know which of  
3 your pockets we might try to grab over the course of those  
4 couple of days.

5 THE COURT: All right. We will do that. At some  
6 point, we'll break and again it will take Ms. Jeng to really  
7 read the calendar with particularity. So we'll do that for  
8 you.

9 And alternatively, again, I don't want to lose time,  
10 but I do believe that the week of October 10th which starts  
11 with a holiday on Monday, that would have been my trial week.  
12 And we don't have any trials going that week, so I do have some  
13 open time that week. But, again, I'm not trying to push you  
14 guys off. Maybe finding pockets the week of the 3rd is still  
15 preferable. But, again, I want to be considerate of the  
16 holidays.

17 MR. MOORE: Your Honor, Mark Moore on behalf of the  
18 Committee.

19 Just as a housekeeping matter, we'll go ahead and set  
20 our motion for 10:30 on the 5th --

21 THE COURT: Okay.

22 MR. MOORE: -- based on the agreement of the parties.

23 THE COURT: Okay.

24 MR. MOORE: If the Court is acceptable to that.

25 THE COURT: Yes, it is.

1 MR. MOORE: And if something changes between now and  
2 then, we'll certainly be in touch with Ms. Harden about that.

3 THE COURT: All righty.

4 MR. MOORE: But we're going to go ahead and file our  
5 notice of hearing to get that on the record and get that served  
6 out to parties.

7 THE COURT: Okay. So the Committee motion for leave  
8 will be set on the 5th at 10:30.

9 MR. MOORE: Correct, Your Honor. Thank you.

10 THE COURT: All righty. So does that bring us to the  
11 motion to dismiss?

12 So let's do this. So before we start that new  
13 information, we'll go to chambers, we'll pull those dates and  
14 times to give to you and so that way over the lunch break you  
15 guys can discuss times on the motion to compel. Again, I don't  
16 want to keep the litigators longer than they have to be.

17 So it is -- it's almost 10:40. We'll stand in recess  
18 until 10:50.

19 THE CLERK: All rise.

20 (Recess at 10:38 a.m./Reconvened at 10:50 a.m.)

21 THE CLERK: All rise.

22 THE COURT: Please be seated. We're going to go back  
23 on the record in Case Number 22-30659 and the related adversary  
24 22-3040.

25 All right. First, to give you guys the pockets of

1 availability that the Court has in the next week or so. On the  
2 4th I have two hours beginning at 3:00. On the 5th, I have two  
3 hours beginning at 10:30, one hour of which has already been  
4 earmarked for the Committee's motion.

5 On the 11th, I have quite a bit of availability that  
6 day. I have from 9:30 to noon. I do have a noon meeting. And  
7 so I couldn't start in the afternoon until 1:30, but otherwise  
8 that day is fairly open, other than the lunch hour.

9 I have all day on the 12th. And then if none of  
10 those work, the next two days are not preferable, but I do have  
11 an opening on Monday, October 3rd. I've got most of the day  
12 open. That's typically when I work on my under advisement  
13 matters, but I do have that day open. And on the 6th is buyer  
14 beware, because that is my birthday. And so I have two hours  
15 starting at 9:30.

16 All right. Does anybody need any of those repeated.  
17 Okay, so maybe --

18 MR. McCARTIN: And how old were you on your birthday?

19 THE COURT: Well, today I'm only 51 and I'm holding.

20 All right. So with that, I'll give you guys that to  
21 chew on. We have four breaks in terms of future scheduling.  
22 But other than that, are we ready to talk motion to dismiss?

23 All right.

24 MS. VANDESTEEL: Thank you, Your Honor. For the  
25 record, Elizabeth Vandesteeg on behalf of Intercity Investment

1 Properties, Inc., the landlord in this case.

2 Your Honor, we do think that it is important to  
3 provide a little context around how we got up to where we were  
4 on this motion to dismiss. And why it is that the landlord is  
5 willing to consider even a short continuance of argument on  
6 this motion.

7 Your Honor, as we have been saying for months, we are  
8 very concerned that these debtors are in serious financial  
9 trouble and they have no meaningful hope or likelihood of  
10 reorganization on the near horizon. They have been using money  
11 for years, Your Honor. And that has not stopped post-petition.

12 According to the debtors' August MOR, they have lost  
13 approximately 15.7 million since the filing date. We have seen  
14 mounting --

15 MR. JOHNSON: Your Honor, I apologize for  
16 interrupting.

17 We had agreed on a path to announcing an adjournment  
18 and we're hearing argument -- or testimony actually, regarding  
19 certain of the facts. I mean we just agreed on some sort of  
20 format for adjourning this thing. I don't think we need to be  
21 talking about that. I think we should be informing the Court  
22 under the terms by which we all agreed to move this. Four  
23 parties agreed to it out here.

24 MS. GREEN: Yes.

25 MR. JOHNSON: I don't -- I just don't understand what

1 the argument or the testimony has to do with that.

2 MS. VANDESTEEG: And if I might add, we did not  
3 request the adjournment. Your Honor, if I may?

4 As part of the conversation that all counsel had as  
5 we were leading up to this. I expressly advised the parties  
6 that we would still need to provide some context to the Court  
7 as to why we were here and what the pathway is going forward,  
8 Your Honor.

9 My remarks will be brief, but I think they are  
10 important, again, to set the context for what this proposal is  
11 going forward.

12 THE COURT: Mr. Johnson, I think it's fair. Let's --

13 MR. JOHNSON: All right.

14 THE COURT: I mean let's -- I mean obviously we still  
15 have a main show to get to that I'm assuming is going to be  
16 contested and we're going to have some witnesses.

17 MR. JOHNSON: Thank you.

18 THE COURT: So let's hear her out. Because obviously  
19 if any of it is a predicate to what we're here later in the  
20 afternoon, I think it is important. And the debtors can  
21 respond, if appropriate.

22 MS. VANDESTEEG: Thank you, Your Honor.

23 In addition to those financial losses, we have also  
24 seen mounting accrued administrative expenses. Some of which  
25 have been concealed. It was not until late last night that the

1 debtors filed their first fee application that gave us any real  
2 clarity --

3 THE COURT: I saw that.

4 MS. VANDESTEEG: -- into professional fees that had  
5 been accrued through end of June.

6 We do know, Your Honor, based upon other filings,  
7 that the budget through June for debtors' professional fees was  
8 supposed to have been at 1.8 million. But it appears that the  
9 actual spend has been more in the range of 2.6, Your Honor.

10 So we are even what we know, substantially over  
11 budget on those professional fees in the first two and a half  
12 months of this case. The August MORs, Your Honor, also reflect  
13 now, through end of August, nearly 4 million in accrued  
14 outstanding professional fees. September has clearly been  
15 another busy month.

16 The August MORs also reflect 2.3 million in post-  
17 petition accounts payable and 1.2 million in due to affiliates.  
18 And, Your Honor, as we have raised, we are concerned also about  
19 other substantial financial hurdles that are bubbling right  
20 beneath the surface but that may not yet have appeared on  
21 public filings.

22 As Your Honor may recall --

23 THE COURT: There were property taxes.

24 MS. VANDESTEEG: -- as we presented in connection with  
25 the adequate protection motion. The rent is subject to an



1 annual CPI adjustment. And, Your Honor, that happens in mid-  
2 October. And we, indeed, are supposed to be back in front of  
3 this Court with respect to what that adjustment in the rent  
4 payment is I believe on October 17th.

5 And given inflation this year, we do expect that that  
6 adjustment will be at the upper limit, which is a five-percent  
7 upward adjustment.

8 And Your Honor may recall, also, that property taxes  
9 come due on October 1st. And while there is a grace period for  
10 payment before late charges will be incurred at the end of  
11 January, the payment date when they become due is indeed  
12 October 1st. And that tax bill is in the range of about \$2  
13 million.

14 Your Honor, we've seen some developments also since  
15 the filing of this motion to dismiss that again are factoring  
16 into why we are willing to give this a short continuance. Your  
17 Honor, based upon recent filings from UMB, for example, we now  
18 know that UMB at least as of now, is publicly stating that they  
19 are not willing to extend the debt --

20 THE COURT: Uh-huh.

21 MS. VANDESTEEL: -- in either duration beyond October  
22 31st or in scope and amount, beyond the 10.1 million.

23 What we are --

24 THE COURT: 12/31?

25 MS. VANDESTEEL: 10.1 million was the total.

1 THE COURT: You said extend the debt beyond.

2 MS. VANDESTEEG: 12/31 -- December 31st.

3 THE COURT: Okay. Okay. Or an amount beyond the  
4 10.1 that has already been allowed.

5 THE COURT: Okay.

6 MS. VANDESTEEG: We are also concerned about various  
7 defaults that we have identified under the debt, with respect  
8 to variant spends in the budgets.

9 THE COURT: Uh-huh.

10 MS. VANDESTEEG: And, also, with respect to non-  
11 payment of some of the administrative fees, such as the fees of  
12 the UCC. Now we do appreciate and it has been made very clear  
13 to us that none of those defaults, that no defaults, under the  
14 debt have been called. But, Your Honor, we also don't have any  
15 understanding or assurance that they have been waived.

16 We are, as always, concerned that this is a case  
17 which is ripe for administrative insolvency, if not already  
18 there. And by our calculations, using the debtors' own budget  
19 going through November 13th, assuming a lot of the other things  
20 remain steady, just due to the accrual of additional expenses,  
21 particularly administrative expenses, by November 13th, we  
22 calculate that the debtors are going to be approximately 8.4  
23 million administratively insolvent.

24 So we are very worried about a potential abrupt end  
25 to the music in this case. And that is why we felt it

1 incumbent to get these issues in front of the Court in  
2 connection with a motion to dismiss based upon a plan, that on  
3 its face appeared to be utterly unfeasible, with no other  
4 potential pathway going forward.

5           Throughout this process the landlord has bene  
6 antagonized. We have been vilified in connection with the  
7 litigation and the allegations. And we have been siloed from  
8 being permitted to have conversations with any other  
9 stakeholders in terms of what happens if the plan doesn't.

10           THE COURT: I think you're holding your own Ms.  
11 Vandesteeg.

12           MS. VANDESTEEG: I'm doing my best, Your Honor.

13           In good news, we were recently approached by the UCC.

14           THE COURT: Uh-huh.

15           MS. VANDESTEEG: By the Committee. And we were  
16 informed by Committee counsel that there was a desire on the  
17 part of the Committee, to be able to explore conversations with  
18 the landlord about that contingency planning. And they asked  
19 would we be willing to enter into those conversations.

20           Your Honor, as I'm sure you can appreciate, the  
21 landlord was extraordinarily hesitant and unwilling to do so,  
22 with the concern that any such conversations that the landlord  
23 may enter into with the Committee would be subjected to  
24 potential reforming of certain allegations raised in the  
25 adversary, in terms of conspiracy, competition. We were very

1 concerned that any conversations with the Committee would be  
2 used against the landlord in connection with the adversary.

3 And we requested that the Committee go and get  
4 comfort and affirmation from the other parties in interest,  
5 namely the debtors, UMB, and Lifespace, that know we were, that  
6 the Committee and the landlord were authorized to engage in  
7 those conversations around this potential contingency planning  
8 in the event of potential lease termination and reversion and  
9 transition of the property back to the landlord.

10 THE COURT: I've reviewed the papers right now.

11 MS. VANDESTEEG: Excellent.

12 Your Honor, we were unable to get to that until very  
13 recently, after the Committee did file its papers. Leading to  
14 this hearing there have been communications between the  
15 stakeholders. And I think that we are close, Your Honor, with  
16 respect to getting the agreements and the comfort and assurance  
17 that the landlord needs that in the event that the UCC and the  
18 landlord do enter into these discussions, that they will be  
19 authorized and permitted by the debtors, by UMB and by  
20 Lifespace.

21 They will not be then the basis on their own for any  
22 further allegations in the adversary but with the express  
23 representation by all parties that these discussions will not  
24 involve the sharing of confidential information. And that,  
25 Your Honor, is the sticking point that we are still at. Is how

1 for purposes of these conversations and this agreement are we  
2 going to define confidential information?

3           Needless to say, this is a very important issue for  
4 the debtors. We are cognizant of that, which is why we want  
5 clarity around what that should be defined as. Just before  
6 this hearing, Your Honor, we did have conversations about  
7 whether we could go back to existing NDAs that are in play  
8 between various of the different parties, and figure out what  
9 an appropriate definition of confidential information is.

10           Your Honor, the proposal for today is that we come  
11 back and we continue this hearing on the motion to dismiss to  
12 the same date as the Committee's motion.

13           In the event the parties can reach an agreement as to  
14 what this specific language is, around what the parties are  
15 permitted to do and how confidential information will be  
16 defined, I think that that will end up muting -- and I don't  
17 want to speak for the Committee, but I think that it will end  
18 up muting both that motion and will also then give the landlord  
19 the comfort needed to further extend hearing on the motion to  
20 dismiss.

21           I think if we can get to agreement on that, Your  
22 Honor, by next week's hearing, we would then propose to further  
23 adjourn the hearing on the motion to dismiss to what I believe  
24 will be October 26th, Your Honor, which again is what I  
25 believe. But I'm going to leave that to the other parties on

1 exclusivity. To present to you in terms of potentially a  
2 continued date on exclusivity.

3 But given these movements now that we've seen since  
4 the filing of our motion, we'd like to give the Committee the  
5 opportunity to have those conversations and see if there is a  
6 potential pathway forward and be a participant in that  
7 contingency planning as the Committee has requested, before we  
8 ask this Court to otherwise take up the motion to dismiss on a  
9 substantive basis.

10 THE COURT: Thank you, Ms. Vandesteeg.

11 MS. VANDESTEEG: Thank you, Your Honor.

12 THE COURT: Appreciate it.

13 MR. JOHNSON: For the record, Your Honor, Jeremy  
14 Johnson from Polsinelli on behalf of the debtors.

15 Always twists and turns in this case, Your Honor.  
16 Again, we were approached last night. There were conversations  
17 at a meet and confer that was held on Monday, regarding what  
18 this hearing was going to look like today, when we were trying  
19 to figure out. And that's the first time that we had heard  
20 from the landlord that they might be interested in considering  
21 an adjournment.

22 And they do, of course say, you know, granting a  
23 short continuance. Your Honor, I think that's fairly  
24 disingenuous. There were emails last night. We had heard that  
25 there were conversations happening. That the landlord might

1 want to move the motion. It is their motion. So we, of  
2 course, prepared for today, throughout the weekend and late  
3 into the evening. We emailed counsel last night.

4 And then sort of very late in the evening, 7:00,  
5 8:00, something like that, there were emails going around about  
6 how we might consider adjourning this thing under a certain set  
7 of conditions and everything else like that.

8 Your Honor, the motion to dismiss was filed nine days  
9 after the plan was filed back in August. And, Your Honor, we  
10 appreciate their version of the facts. It's inaccurate and as  
11 we typically are, we're very far apart in how we view a certain  
12 set of facts in these cases.

13 We anticipate providing testimony from Mr. Chandler  
14 in connection with the exclusivity motion, showing that we do  
15 have cash sufficient to pay the obligations of the estate  
16 through the end of this case. These are all the same issues  
17 that are sort of wrapped up in the motion to dismiss.

18 We're ready to deal with these. I think  
19 irresponsible allegations by the landlord. Your Honor, at the  
20 end of the day here, you know, we all know what they're doing  
21 and why they're doing it. And they filed their motion to  
22 dismiss and then last week in Court they said we're very  
23 concerned if that motion to dismiss gets granted, as to what  
24 happens.

25 That's probably something they should have thought of

1 before they filed the motion, Your Honor, in terms of working  
2 towards a solution. Now let's talk about that for a moment.  
3 Because, you know, I understand -- I don't really understand  
4 why they're relating the conversations with the Committee to  
5 the motion to dismiss.

6 I think those are two very separate things. But at  
7 the end of the day, we never prevented the landlord from having  
8 a conversation with the Committee. Our view is always that you  
9 can have conversations with anybody you want to have  
10 conversations with. You probably should not disclose  
11 confidential information or we will sue you. And that was our  
12 message and that's always been our message. That's kind of how  
13 we got here, in our view of the world, Your Honor.

14 So at the end of the day, you know, the idea of a  
15 landlord sitting down and discussing a potential transition  
16 plan with the Committee, I don't know what they're so afraid  
17 of. I mean if they wanted a hold harmless, they wanted some  
18 sort of assurances that we weren't going to get mad about it,  
19 Your Honor, again they're entitled to have these conversations.  
20 They do so at their own risk in considering what information  
21 they're willing to put out.

22 Now there's compromise about, well, as long as you  
23 agree that we can talk to them about transition, we're willing  
24 to agree to that, Your Honor. That's sort of the underlying  
25 agreement here that's leading us to this possible adjournment.



1 The only issue is going to be, you know what is confirm  
2 information. And there are NDAs signed by the Committee.  
3 There are NDAs signed by the landlord. You know, the  
4 confidential information is very much a feature of this Chapter  
5 11 case.

6 So we do have to work out what that confidential  
7 information means. I think we can just rely upon the  
8 agreements as they're currently defined and move on.

9 But at the end of the day, Your Honor, you know,  
10 we've heard a lot of testimony about this. Those are all  
11 issues for the motion to dismiss. We think the authority is  
12 very clear on this. We're ready to go forward with the motion  
13 to dismiss fight. So I -- frankly, if we can't work out this  
14 language in very short order, then we're going to grab some  
15 time on your calendar, within one of those dates, and just go  
16 ahead and have the hearing.

17 Because, you know, we keep on -- I understand they  
18 want to keep the motion to dismiss hanging over our heads every  
19 30 days for the next omnibus. It just doesn't make any sense.  
20 We need to move on and move these cases forward. So that's our  
21 view, Your Honor. But -- so this is a very long way of saying  
22 we think we have a way of kicking this to next week, at least,  
23 and potentially kicking it all the way to the next omnibus,  
24 which is October 26th.

25 THE COURT: Okay. Thank you very much, Mr. Johnson.

1 MR. JOHNSON: Thank you.

2 MR. McCARTIN: Just a few comments, Your Honor.

3 The Committee's attempting to become a lot more  
4 involved in the proceeding. We're extremely concerned with the  
5 status of the case. And as landlord's counsel noted, as of a  
6 couple of weeks ago, we were losing sleep at night with regard  
7 to the posture of the case.

8 We saw a debtors' -- what we've been calling debtors'  
9 Plan A that was filed and being pursued that it's no secret to  
10 any of the parties, we've been meeting since the second week of  
11 the case. The Committee's always thought was not a good  
12 strategy. We've never supported the Plan A path.

13 We've never liked building a plan confirmation  
14 subject to and conditioned upon litigating being tried in such  
15 a short period of time and obtaining such an extraordinary  
16 result. We thought that was not a good strategy. But the  
17 debtor had exclusivity, and we were immediately asking the  
18 parties to engage with us in a negotiation of a Plan B.

19 That, as we'll talk about later this afternoon, did  
20 not go well. And we were making no progress on a back up Plan  
21 B.

22 Because we wanted to have a Plan B in our back pocket  
23 that, heaven forbid if we were right and Plan A was going to  
24 fall on its face and we were out of time and out of money, we  
25 didn't -- we were losing sleep at night about how Edgemere

1 would operate and make payroll, and pay vendors, and keep  
2 residents comfortable and protected.

3           So we then turned our attention to what we call Plan  
4 C. And you'll hear a lot about that this afternoon. Plan A was  
5 the debtors' plan. Plan B was an alternative plan that didn't  
6 require a trial and a big win of the litigation before we  
7 confirmed a plan.

8           And Plan C was if all of that fails, we don't put a  
9 Plan B in place, we can't agree upon a Plan B, a Plan B doesn't  
10 get confirmed, whatever the contingency.

11           Again we're losing sleep at night with what happens  
12 if the debtor runs out of money. What happens if we come up to  
13 December 31st and the Court has no choice. With a debtor out  
14 of money, we thought the Court may, worst case scenario have no  
15 choice but to allow the landlord to terminate the lease, and  
16 retake possession.

17           That sounds easy but has a lot of scary details.  
18 Payroll has to be made or you're going to lose these scarce  
19 employees. Vendors have to be paid or they're not going to  
20 deliver food.

21           THE COURT: Remind me, the employees are that of  
22 Lifespace, correct?

23           MR. McCARTIN: Uh-huh. They are.

24           The -- but they're being paid out of the debtors'  
25 operations. And the debtors' -- you know, again we don't mean

1 to wade into financial solvency, insolvency, accrued expenses.  
2 We've been asking for a solvency analysis to -- we think the  
3 Committee should be on top of that. We'll talk about that  
4 later this afternoon.

5 But in any event, we thought it was only responsible  
6 and prudent, to talk to the landlord about that worst case  
7 scenario plan. The landlord said we've been painted as  
8 predatory. We've been painted as trying a hostile takeover.  
9 We're really unwilling to add gas to that fire by talking to  
10 the Committee about what we would do if we retook possession.

11 The Committee wants to know things like who would you  
12 hire to operate it. What would their budget be. Would they  
13 run it like a Holiday Inn or would they run it like a high end  
14 Edgemere. We know it will take working capital to keep it  
15 open. We all know that.

16 Will you, the landlord, provide that working capital  
17 to keep it operating at a high level. Because we need to get  
18 the answer to those questions, so that we can very soon start  
19 having meetings with Edgemere. And we need to tell the current  
20 residents who are already nervous, already starting to look  
21 around for alternative homes, don't worry.

22 Worst case scenario, there's a safety net plan that  
23 takes care of the residents and Edgemere will continue  
24 operating. So you don't need to worry about whether you're  
25 late out the door looking for an alternative home and they're

1 already taken up in the marketplace, because heaven forbid  
2 they're competing for a limited number of alternatives.

3           We then, within the last few weeks, have become -- I  
4 guess that's the negative. That was the scare. That's our  
5 concern. The last couple weeks the case has turned positive.  
6 And we've begun negotiations with the bondholders, as well as  
7 Lifespace on a Plan B. And we're encouraged by that. We're at  
8 the very beginning of it. We know that's a tough path. We  
9 know that's a hard plan to put together. We know it takes a  
10 lot of money to fund a Plan B. But we're encouraged by it.

11           So for the first time we're not being asked to only  
12 myopically focus on a Plan A that we always thought was not  
13 smart. Based on that, we went to the landlord and we said is  
14 it really your intent to take over and get repossession of the  
15 property, or do you really just -- would you like to see  
16 Edgemere reorganized and your rent paid. Because Plan B will  
17 be assume the ground lease and pay your rent.

18           Therefore, if you're being honest with the Committee  
19 and it's not your intent to retake possession and repurpose the  
20 property into really cool condos, then we're encouraged by the  
21 direction of the case. And I understand your motion to dismiss  
22 was filed when you thought Plan A was the only game.

23           But we're going to ask for exclusivity to be  
24 terminated. We're going to ask for the permission to file Plan  
25 Bs. And we now have two credible, responsible financially

1 stable parties talking to us about a Plan B. Again, still  
2 speculative. Just at the beginning. But based on that, would  
3 you agree to continue your motion to dismiss? Because no  
4 reason to dismiss if we're making progress.

5           However, I'm not gambling on a Plan B either. I  
6 think that's reckless because it will be difficult. We still  
7 need a Plan C, worst case scenario with the landlord. And the  
8 landlord said sure, but we need to be able to talk about worst  
9 case scenario. We need -- they agree we need that plan in place  
10 because I take them at their word. They, too, are losing sleep  
11 at night with what they're going to do with 350 residents if  
12 this thing -- you know, we've got a maturity of DIP at 12/31.  
13 We know they run out of working capital 12/31 or enough working  
14 capital to keep the place open.

15           So what we've said, and as the Court well knows,  
16 there's a hundred negotiations behind the scenes. What we've  
17 said to the landlord is if the debtor and the trustee and  
18 Lifespace will acknowledge on the record that, of course, the  
19 parties can talk about worst case scenario planning. And  
20 having those discussions does not, in and of itself, create a  
21 predatory takeover, attempt to takeover Edgemere. It doesn't  
22 in and of itself constitute a hostile takeover.

23           It doesn't in and of itself add causes of action to  
24 the lawsuit. Would you guys -- if we can get that statement on  
25 the record and get you comfortable to start those discussions,

1 would you based on what we're telling you and representing to  
2 you now positive discussions about a Plan B. And permission to  
3 talk to the Committee about a Plan C, would you withdraw or --  
4 not withdraw, would you continue your motion to dismiss?  
5 Because it doesn't do any of us any good to go spend eight  
6 hours in Court fighting over administrative insolvency and  
7 accrued payables, and who's paid and who's not.

8 THE COURT: And whether that's in the best interest  
9 of the estate.

10 MR. McCARTIN: Exactly. The landlord said absolutely  
11 we will. That's not our goal is to proceed with our motion to  
12 dismiss. Our goal is to see the case moving in the right  
13 direction so that someone will confirm a plan and assume our  
14 lease and pay our rent.

15 I'm taking them at their word. I view that as all  
16 very encouraging. The case took a -- I'm cautiously  
17 optimistic. The case took a nice turn in the last ten days.  
18 Primarily because we had all of these disputed contested  
19 matters teed up for today. We all know how bankruptcy works.

20 So we are -- we're 100 percent in favor of the  
21 landlord continuing the motion. I think they're going to work  
22 out their lawyering language of how much they'll say on the  
23 record to take comfort. But there's no reason we can't work  
24 that out.

25 Most of us are scratching our heads. You know,

1 normally who would ever even think that you need permission in  
2 a bankruptcy case to talk to a creditor constituency about a  
3 resolution or protection of the estate's residents.

4 But I know how we got here. And that's the context I  
5 guess the landlord wanted you to have. Is I tried to, you  
6 know, explain as plainly as I can what we're doing behind the  
7 scenes to try to move the case in a little bit better position.

8 Because we know Plan A doesn't work, Plan A because a  
9 condition precedent of confirming a plan and the -- or a  
10 condition precedent of trying the litigation and winning big.  
11 And the debtor has already told us they can't do that by  
12 December 31st. It's just logistically impossible. So Plan B  
13 is now the focus if you will. It's the only game in town, I  
14 think.

15 And we have two parties that are interested in  
16 competing in Plan B, so we'll talk about this afternoon. So,  
17 again, this -- I know all these background conversations took a  
18 few minutes, but it was better than eight hours of fighting  
19 over a motion to dismiss that I think would not be in the best  
20 interest of the estate.

21 Thank you.

22 THE COURT: Well, thank you, Mr. McCartin.

23 Mr. Bleck?

24 MR. BLECK: Good morning, Your Honor. So it seems  
25 like we're venturing into a little bit of some of the other



1 pleadings this afternoon.

2 THE COURT: Truer words have never been spoken.

3 MR. BLECK: Exactly.

4 THE COURT: Or maybe the October 5th pleadings.

5 MR. BLECK: Exactly. And Mr. McCartin gave a bit of  
6 a preview of where we are with respect to that.

7 On the simple matter of the issue concerning the  
8 ability of the landlord or the Committee to talk to the  
9 landlord, which started all of these discussions, it's  
10 interesting when people say well, we're afraid that -- we want  
11 UMB's consent because we're afraid that there will be an  
12 amendment to the adversary proceeding.

13 Well, if you remember, Your Honor, we wanted to be a  
14 party to the adversary proceeding. We're not a party to the  
15 adversary proceeding. As Mr. McCartin says predator  
16 constituency speak all the time, and they can speak all the  
17 time.

18 With respect to an issue concerning whether we'll  
19 hold someone harmless with respect to those discussions, we  
20 can't agree to a hold harmless. That's just not going to  
21 happen.

22 But we don't have an objection to that. But I think  
23 we need to dial back some of the issues associated with what's  
24 happening here. And Mr. McCartin talking about Plan C, because  
25 I hate to -- you can never guarantee it, and I understand that.

1 But in the years that I've worked in this space, I have never  
2 ever ever seen a facility shut down. And that's for 15-20  
3 years. Where we had something like this.

4           Everybody understands the issues at stake. There's a  
5 balancing act between the economics and the residents, and  
6 everybody appreciates that. That's why we said, and had a  
7 discussion, and said, maybe we need to look to an alternative,  
8 because in these circumstances with this overriding  
9 contingency, which as Mr. McCartin has stated, can't be  
10 satisfied, even under the debtors' requested extension of  
11 exclusivity, because they've requested to extend.

12           And this is not, by the way, a termination -- a  
13 motion to terminate exclusivity. It's a request of the debtor  
14 to extend exclusivity. So there's a difference of the burden  
15 here.

16           THE COURT: Yes.

17           MR. BLECK: And the issue is Plan A, although it  
18 sounds fantastic, simply isn't possible to be confirmed within  
19 the time frames everybody is talking about. The debtors  
20 decided to file a motion to amend the scheduling order. That  
21 trial date is now kicked out until at least February. And I  
22 know the parties are talking about whether it's February, March  
23 or April now.

24           Debtors filed a motion to extend exclusivity.  
25 Looking to extend exclusivity until February. I mean we're

1 going to be back at the table again in February, arguing about  
2 this very exact issue.

3 And the concern that we all have is that liquidity is  
4 tight. There's no doubt about it. We are funding the case.  
5 Liquidity is tight. We're concerned about the direction. And  
6 that's why we've told the debtor that we wouldn't extend the  
7 maturity of the debt beyond December 31st.

8 We did have discussions about some conditions for  
9 extension. Where the DIP lender said they would extend through  
10 the first quarter of next year. But it was on the condition  
11 that exclusivity is terminated today. Because that would have  
12 opened up the door relative to reviewing these possible other  
13 plans. The debtor would have had funding necessary to move  
14 forward. We said we'd have to agree to a budget for the first  
15 quarter. But we were told that they couldn't agree to those  
16 terms.

17 So in that circumstance, we said we have no other  
18 option here but to move forward to object to the extension of  
19 exclusivity. Be in a position to file what Mr. McCartin is  
20 referring to as a Plan B. To basically move these cases  
21 forward, get the operational issues out of the bankruptcy.  
22 Because that's the key here, get the debtor stabilized, get the  
23 debtors out of bankruptcy on an operational level. As Mr.  
24 McCartin said, landlord shouldn't object because we're going to  
25 assume the lease.

1           So hopefully that will resolve their issues. I'm  
2 sure it won't. They'll question the issues regarding  
3 feasibility and those issues. But that's hopefully a narrow  
4 issue. But we're going to assume the lease. We'll reserve  
5 rights relative to the landlord claims. And pursue those in a  
6 more timely manner.

7           But we felt that given the capital needs of this  
8 community and the fact that the bondholders are willing to  
9 continue to stand up and present and provide that needed  
10 capital of going forward with the restructure plan, we felt  
11 that we need to get exclusivity not extended to allow the  
12 parties to move this forward, so we don't need to talk about  
13 Plan C.

14           Because that's terrifying to all of us as  
15 professionals, as to residents, and to everybody. And we all  
16 understand that. And what I would say is the bondholders at  
17 the table deal with senior living on a daily basis. So they  
18 understand those issues, as well. And they understand the  
19 issues associated with balancing the issues between the  
20 residents and the economics here. They're very sophisticated.

21           They've been working through the issues. They think  
22 that there is a feasible plan that they can put on the table.  
23 And we just don't have enough time to see what happens over the  
24 next few months, all the way up to December, or January or  
25 February. We just need to be able to move this process forward

1 today.

2 And I apologize, Your Honor, for going into the  
3 exclusivity motions, but I felt like I had to stand up and  
4 address the particular issues that were raised by the various  
5 parties.

6 THE COURT: Thank you very much, Mr. Bleck.

7 MR. BLECK: Thank you.

8 MR. JOHNSON: So, Your Honor, if I may just very  
9 briefly.

10 We're going to reserve our exclusivity arguments for  
11 the exclusivity motion. We're currently before you on the  
12 motion to dismiss. We'll be talking a lot about exclusivity  
13 and the history and the plans, and alternatives, and what  
14 should be done, in a few minutes.

15 But I think, Your Honor, the proposal that Ms.  
16 Vandesteeg described is on the table. We're going to work on  
17 some language. And if we can get some language worked out,  
18 then I think we'll be able to kick the motion to dismiss all  
19 the way to the 26th. If we can't get language kicked out, then  
20 we're going to need to grab one of those pockets of time next  
21 week. I think it's probably best-served for the parties to  
22 talk about that, and let chambers know, if that makes sense.

23 THE COURT: Well, let me be clear on a motion to  
24 dismiss. Okay. Obviously, I don't need to tell the parties  
25 what the standard is on a motion to dismiss.

1 Obviously, the parties have already articulated how  
2 substantial a change in the case that a motion to dismiss is  
3 and the heavy, heavy burden the movant would require.

4 Obviously, I'm a bankruptcy judge and I call balls  
5 and strikes for most of the day. And I see lots of Chapter  
6 11s. And the goal of every Chapter 11 is to reorganize and  
7 rehabilitate. But these types of cases are special, right.

8 I mean you have residents that are at the Edgemere.  
9 I mean, obviously, our Webex is often filled with residents  
10 that I can only imagine are trying to make sense of what they  
11 see in the pleadings.

12 This Court's not going to shut down the Edgemere. I  
13 just want to say that. I realize every party in here has to do  
14 what it has to do. It has to advocate for its clients. But  
15 there is absolutely no way that this Court is going to leave  
16 these residents without a substantial safety net. And when I  
17 say a safety net, I mean a plan. And I don't necessarily mean  
18 a capital "P" plan of reorganization, but there's at least  
19 going to be a little "P" plan of what the go-forward strategy  
20 is for these residents.

21 So I don't read the news articles. Okay. So I don't  
22 know if the sky is falling in the news articles or if it's all  
23 rainbows and unicorns. I don't advocate on that side, I don't  
24 read on that side, and that doesn't move me.

25 Okay. What moves me is again the ability to run a

1 Chapter 11 in the best interest of the entirety of the estate.  
2 I am thankful notwithstanding how adversarial the parties are,  
3 and how adversarial the nature of the case has to be. Everyone  
4 has a different constituency. And they have different  
5 financial motives. They have different -- they just have  
6 different ways that they want to get to their various  
7 objectives.

8 But in no way, shape, or form should anyone believe  
9 that Court's not going to take lightly the thought of shutting  
10 down the Edgemere and leaving the residents with no options.  
11 That's just not going to happen.

12 Okay. Whether that is on a motion to dismiss or  
13 whether that's because the Court is just going to keep giving  
14 folks some more time to come to some alternative solutions. It  
15 looks like parties are finally talking. Okay.

16 And I realize that for whatever reason we've got the  
17 motions for leave to address. We've got exclusivity to  
18 address. And we -- and like I said, I will call balls and  
19 strikes on all of those things. But I don't want this issue in  
20 the air of whether or not it's just going to crater.

21 Okay. At a minimum we have DIP money through  
22 December. I recognize, obviously, there can be different paths  
23 or defaults and things like that, that could derail some  
24 things. But at the same time, I don't want to leave the issue  
25 in the air that at some point this senior living facility is

1 getting shut down, because it's not. Okay. Not in the near  
2 term. That's just not going to happen.

3 And I'm not prejudging any motion to dismiss. I  
4 mean, but my thought is if there are issues, if there are  
5 substantial issues and those are found in the evidence, then  
6 we're going to find a way to address them. Okay. And you  
7 know, perhaps exclusivity is a way to bring other parties to  
8 the table. Perhaps there's something else.

9 But I do believe that the debtors do need to start  
10 thinking, obviously, about a non-litigation strategy, just in  
11 terms of a way out of bankruptcy. I think that's obvious. But  
12 I just wanted to clear the air and divest people of the thought  
13 that at any time soon the Edgemere is just closing down.  
14 Because it's not.

15 Okay. Not on my watch.

16 MR. JOHNSON: Thank you, Your Honor. We appreciate  
17 those comments. We'll -- I think the next step, Your Honor, is  
18 to -- we're going to -- we'll work out whatever we can work out  
19 in terms of language on the motion to dismiss and move that  
20 forward. And then we have exclusivity left, which we should  
21 probably take up in the afternoon, if that would make some  
22 sense.

23 THE COURT: Yes, I think so.

24 Comment, Ms. Vandesteeg?

25 MS. VANDESTEEG: Thank you, Your Honor.



1 For the record, Elizabeth Vandesteeg on behalf of the  
2 landlord.

3 Your Honor, we appreciate your comments. With  
4 respect to immediate next steps on the pending motion --

5 THE COURT: Yes.

6 MS. VANDESTEEG: -- for where we are for today, we  
7 again would propose that we do come back --

8 THE COURT: Yes.

9 MS. VANDESTEEG: -- in front of the Court, adjourn  
10 this to October 5th, following the Committee's motion for  
11 authorization, should it still be necessary. I expect also  
12 that we'll be able to work out language that will work for all  
13 of the parties ahead of that.

14 If not, then we hear what Mr. Johnson is saying and  
15 we will find a different date by which we will move forward.  
16 But understand, Your Honor, that we fully agree with you. And  
17 that there should not be any circumstance here in which there  
18 is simply again that cliff. That end.

19 And we appreciate that there are now -- there now at  
20 least appears to be a willingness of the parties to engage then  
21 in those conversations with the landlord so that in the event  
22 again, as Mr. McCartin pointed out, there is either a Plan A or  
23 a Plan B that does not work.

24 And I appreciate Mr. Bleck's perspective that he's  
25 never seen that happen. But I think that we all recognize that

1 the existence of this lease or a term of years with an  
2 unrelated third party is --

3 THE COURT: Makes it different.

4 MS. VANDESTEEG: It's different.

5 THE COURT: More difficult.

6 MS. VANDESTEEG: And it's unlike every other case I  
7 think that we've seen out there. And is unlike all of these  
8 other models.

9 So Your Honor, long-winded way of saying thank you  
10 for your comments. We are in agreement with you and we'd like  
11 to adjourn the motion to dismiss to October 5th at the 9:30  
12 setting.

13 THE COURT: Okay. Thank you, Ms. Vandesteeg. And  
14 again, I -- we have very sophisticated counsel here.

15 MS. VANDESTEEG: 10:30, Committee. I misspoke.  
16 10:30.

17 THE COURT: Fair enough. We have very sophisticated  
18 counsel here. Very, very good counsel representing all sides.  
19 I commend you all. In terms of the case, we're lucky to have  
20 good counsel on all sides.

21 And I'll just say for the record, it's not my first  
22 rodeo. I understand why folks do what they do. I understand  
23 why motions are filed. And I understand that sometimes it's to  
24 judge a motion up or down. And sometimes it's for an intended  
25 effect and sometimes you got to break parties apart before you

1 can bring parties together.

2 So I appreciate all of that. I will carry the motion  
3 to October 5th, Ms. Vandesteeg.

4 But I just want to be clear for the parties, so that  
5 you guys can manage witnesses and the like. I won't hear it  
6 that day. We can carry it. We can have what has come to be  
7 common in this case, a status conference on it, and talk about  
8 whether or not we want to go forward that day. But it won't be  
9 an evidentiary hearing on motion to dismiss. We just simply  
10 won't have time for it.

11 So you guys can manage accordingly -- manage travel  
12 schedules accordingly. It will be hybrid format. So those  
13 that want to appear via Webex can, because again I've got a  
14 maximum of a couple hours of time that day.

15 All righty. With that said, it is 11:30. I mean do  
16 the parties want to -- I mean we can get started if you'd like  
17 and push forward for an hour, or we can break early if the  
18 parties believe that it might be time to talk a little bit.  
19 And then we can start fresh after lunch.

20 What would you like?

21 MR. McCARTIN: Your Honor, I've got a small  
22 scheduling problem. Mr. Robichaux is our only witness today.

23 THE COURT: Yes.

24 MR. McCARTIN: And I lose him at 2:30. I thought  
25 that would be, you know, this morning or by 2:30 he'd be able

1 to testify. I would just see if the parties could accommodate  
2 us. Maybe we'll put him on first whenever we -- we've got him  
3 until 2:30. I would just hate to lose my witness.

4 THE COURT: Okay. Mr. Johnson?

5 MR. JOHNSON: That's the first I've heard of it, Your  
6 Honor, but we're able to accommodate that, I think. I mean we  
7 only have one witness, as well. Very short. It can't be more  
8 than that. So we can take a break and come back.

9 And I would suggest, Your Honor, we deal with -- we  
10 put the witnesses on first and then move to the legal argument.  
11 And then we can spend all afternoon waxing poetic about access  
12 periods. So that would work for us.

13 THE COURT: How much time do you think you need with  
14 Mr. Robichaux?

15 MR. McCARTIN: You know, I would think 30-40 minutes.

16 THE COURT: Okay.

17 MR. McCARTIN: And, yeah, if we could defer opening  
18 arguments and just into closing and get the witnesses on, that  
19 probably gets him on and off.

20 MR. JOHNSON: That works for us, Your Honor.

21 THE COURT: Okay. Does that work for the other  
22 parties?

23 MR. BLECK: It does, Your Honor. I think we provided  
24 our opening statements in evidence.

25 MR. JOHNSON: We didn't. But we're going to take the

1 last statement, Your Honor. We're going to get the rebuttal  
2 time at the end. Thank you.

3 THE COURT: You got some Shakespeare quotes coming,  
4 some movie references. It's going to be good.

5 All righty. Okay, so with that, does it make sense  
6 to adjourn for a bit?

7 Okay. So it is 11:40 now. Do the parties want to  
8 come back at 12:30, 12:40?

9 MR. McCARTIN: 12:30.

10 THE COURT: 12:30?

11 MR. McCARTIN: 12:30 would be good, Your Honor.

12 THE COURT: All right. Okay. I'll give you all of  
13 our lunch options to consider around the courthouse already.  
14 With that the Court will stand in recess until 12:30.

15 Thanks so much.

16 THE CLERK: All rise.

17 (Recess at 11:38 a.m./Reconvened at 12:34 p.m.)

18 THE COURT: Please be seated. Give the parties a  
19 moment to take their seats.

20 All right. Good afternoon, everyone. We're going to  
21 go ahead and recall Case Number 22-30659, Northwest Senior  
22 Housing Corporation. I think when we last left we were  
23 prepared to start exclusivity.

24 Is that still the case, Mr. Johnson?

25 MR. JOHNSON: That's correct, Your Honor. I don't

1 think there's any changes or updates or any moves to the motion  
2 for exclusivity.

3 As an initial matter, Your Honor, we have the -- just  
4 for -- to make the record clear, we'd like to move into  
5 evidence the debtors' exhibits that were used as part of the  
6 prior presentations. You know, the Debtors' Exhibits A through  
7 S.

8 Now, Your Honor, Exhibits A through S, they are all  
9 pleadings and things associated with that. We did file an  
10 amended exhibit list that has the omnibus reply at T and Chad  
11 Shandler's declaration. We'll deal with the declaration when  
12 we get to Mr. Shandler's testimony.

13 THE COURT: Alrighty. My exhibit notebook has A  
14 through R. And then I have a sealed notebook with FF and GG in  
15 it. And I also have an amended list with V and W.

16 Now, with that said, I look at your list. It says  
17 Exhibit S is Exhibit A to the motion.

18 MR. JOHNSON: Right.

19 THE COURT: So, which is fine. I don't -- I'll be  
20 able to put my hands on it.

21 MR. JOHNSON: Right.

22 THE COURT: So I don't see a problem there.

23 All right. So you're moving into evidence --

24 MR. JOHNSON: A through S, Your Honor.

25 THE COURT: Okay. Are there any objections to the

1 Debtors' Exhibits A through S?

2 MR. McCARTIN: S? S, okay.

3 MR. JOHNSON: S.

4 THE COURT: S, as in Sam.

5 MR. McCARTIN: I think we're okay with those. Those  
6 are on the original witness and exhibit list filed on Monday?

7 MR. JOHNSON: Yes.

8 MR. McCARTIN: Not the amended --

9 MR. JOHNSON: Right.

10 MR. McCARTIN: -- ex parte.

11 MR. JOHNSON: Right.

12 MR. McCARTIN: You know, we're okay with the first  
13 ones, the original amended, or the original witness and exhibit  
14 list.

15 THE COURT: All right. So for sake of the record,  
16 we're going to -- we're looking at the Debtors' witness and  
17 exhibit list at Docket 645. The Court will hereby admit  
18 Exhibits A through S with no objection.

19 (Debtors' Exhibits A through S admitted into evidence)

20 MR. JOHNSON: Thank you, Your Honor.

21 Your Honor, as we discussed prior to the break after  
22 the opening statements by the other parties, we think it's  
23 probably most efficient and we want to be respectful of Mr.  
24 Robichaux's time, so we can probably just put the witnesses on  
25 first and then move to legal argument. As we discussed

1 previously, we're ready for the Committee to put on Mr.  
2 Robichaux.

3 THE COURT: Alrighty. So is Mr. Robichaux on Webex?

4 MR. McCARTIN: Yes, ma'am.

5 THE COURT: Alrighty. If you could say, testing,  
6 testing, sir, so that you appear on camera.

7 Can you mute the 816 number please, Ms. Jeng?

8 THE CLERK: It's been muted, so I'm not sure what  
9 that is.

10 THE COURT: Oh, okay. I apologize. I thought that  
11 it was them since it was coming in on my downstream.

12 THE CLERK: Can you say it again?

13 THE COURT: Mr. Robichaux, if you could say, testing,  
14 testing, so that you appear on the Court's camera.

15 Can you tell if he's muted?

16 THE CLERK: He is muted.

17 THE COURT: Okay. If you could unmute. I can't see  
18 his thumbnail at all.

19 THE CLERK: His camera went on and then off.

20 THE COURT: Okay.

21 MR. McCARTIN: He was. He was before the break. I'm  
22 sorry.

23 THE COURT: Take a moment. He was probably trying to  
24 unmute himself and maybe disconnected his camera.

25 Okay, Mr. Robichaux, if you can hear the Court, if



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1 you could say unmute and then say, testing, testing.

2 MR. McCARTIN: I think Mr. Moore stepped out to call  
3 him also to make sure --

4 THE COURT: Sure. No.

5 MR. McCARTIN: -- he's not distracted.

6 THE COURT: Yeah.

7 MR. McCARTIN: But it shows he's still logged in. Is  
8 that right?

9 THE CLERK: He's still logged in.

10 THE COURT: We'll give it a second.

11 MR. McCARTIN: I lost my witness.

12 THE COURT: Would you like to proffer? Kidding.

13 THE WITNESS: Is everybody waiting on me?

14 THE COURT: Good afternoon. Alright.

15 Mr. McCartin, please proceed. Well, let me go ahead  
16 and swear you in, Mr. Robichaux.

17 LOUIS ROBICHAUX, COMMITTEE'S WITNESS, SWORN

18 THE COURT: Thank you very much.

19 Mr. McCartin.

20 MR. McCARTIN: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. McCARTIN:

23 Q Mr. Robichaux, for the record, would you please state your  
24 name and educational background briefly.

25 A Louis E. Robichaux, IV. Education is I have an

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1 undergraduate degree in business administration, a master's  
2 degree in business administration, and various certifications  
3 and credentials that relate to the financial and restructuring  
4 industry.

5 Q Thank you. And a brief description of your professional  
6 experience focusing primarily on senior care and CCRCs, please.

7 A So I've got about 32 years of business and restructuring  
8 experience all in healthcare. My first job out of business  
9 school was as a licensed nursing facility administrator. I've  
10 worked in senior care, either in an operations role or as a  
11 consultant to turn around professional really since the early  
12 nineties. I also did a stint at Kaiser Permanente, an HMO in  
13 Dallas Fort Worth. So my whole career is in healthcare,  
14 primarily on the consulting crisis management side, but also in  
15 operations.

16 Q And do you have any particular experience with CCRCs?

17 A I've probably done a dozen and a half or so CCRC cases I  
18 would say in the past ten years or so.

19 Q Is Edgemere the half? Sorry. I'll behave. Are you --  
20 and have you been retained by the Official Unsecured Creditors  
21 Committee of Edgemere?

22 A Yes.

23 Q And are you personally involved and familiar with the  
24 progress of Edgemere's bankruptcy proceeding?

25 A I am.

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1 Q Have you had an opportunity to review generally the  
2 proposed terms and conditions of the debtors' proposed plan of  
3 reorganization which has been filed in this case?

4 A I have.

5 Q Can you give us a general outline of your understanding of  
6 that plan?

7 A Yeah. The general outline is -- can you guys hear me  
8 okay?

9 Q Yes.

10 A The general outline is the debtors filed a plan which  
11 assumed a lot of obligations including the residency  
12 obligations premised upon undertaking, prosecuting, and winning  
13 a lawsuit against the landlord, all with an eye toward exiting  
14 on or around December 31st of this year.

15 Q Do you have access before you to the proposed -- to the  
16 Committee's exhibits for today's hearings?

17 A I do.

18 Q Could you turn to what's been marked as Committee Exhibit  
19 3?

20 A I have 14. Let me go and find 3. I actually don't know  
21 that I have 3. I have 14. See if I can maybe find 3. Yeah.  
22 I'm sorry.

23 Q That's okay.

24 A I don't have 3 now, but I have 14.

25 Q Let me see -- yeah. That's all right. I think we can

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1 work around that. Let me see if I understand your previous  
2 testimony. You understand that the debtors' proposed plan is  
3 subject to and conditioned upon what's been defined as a  
4 successful outcome in the landlord litigation. Is that right?

5 A I do. Uh-huh.

6 Q And have you -- are you generally familiar with what  
7 definition a successful outcome is?

8 A Yeah. Generally, broadly. It has really to do with  
9 either an economic outcome resulting in a significant monetary  
10 collection or a resetting of the lease on an involuntary basis  
11 by the Court.

12 Q Okay. And you understand that Plan A has -- anticipates  
13 first trying the landlord litigation, winning the landlord  
14 litigation with a "successful outcome", and then proceeding  
15 forward to a plan confirmation?

16 A Correct.

17 Q Okay. What's your understanding of the timing for  
18 confirmation of debtors' Plan A?

19 A By the end of December.

20 Q And why the end of December?

21 A That's when the DIP matures and generally the DIP  
22 commitment is exhausted as it currently sits.

23 Q Okay. And to your knowledge, does the debtor have  
24 sufficient working capital to continue operating in 2023  
25 without additional DIP financing?

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1 A To my understanding based on information prepared by the  
2 debtors, that they would need both an extension of time on the  
3 DIP as well as additional funds to be advanced under the DIP in  
4 order to continue prosecuting the case.

5 Q Or would a new DIP lender taking out the existing DIP  
6 lender and advancing new funds work?

7 A Under those same terms, more time and more money, but yes.

8 Q Okay. What -- have you discussed debtors' Plan A with the  
9 Committee and are you familiar with the Committee's attitude  
10 toward debtors' Plan A?

11 A Yes.

12 Q And what is that, sir?

13 A I think they're universally very skeptical on both the  
14 timing of being able to conclude such a complication litigation  
15 in a compressed time frame that's very fact intensive. And  
16 they're also very skeptical on the type of relief that the  
17 debtors would need to win in order to even have a shot at  
18 making their Plan A financially feasible. They honestly view  
19 it as pie in the sky and something that is not likely. Even  
20 assuming some semblance of a successful outcome to the  
21 litigation, they don't view it as providing a feasible exit on  
22 the debtors' terms.

23 Q What was the Committee's proposed response to those  
24 concerns about Plan A?

25 A The Committee instructed its professionals to go and

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1 explore alternatives in the event Plan A turned out to not be  
2 feasible. We'd sort of colloquially refer to that as a Plan B  
3 or maybe even a Plan C. So the Committee was very focused on  
4 optionality and risk management in the event Plan A doesn't  
5 work.

6 Q And up -- and did you, on behalf of the Committee,  
7 approach the debtor and its sponsor, Lifespace about developing  
8 an alternative Plan B?

9 A Yes. We did. On multiple occasions.

10 Q And how did that effort work out?

11 A So I would just generally characterize it as both  
12 Lifespace and the debtors acknowledged why we would be  
13 interested in talking about a Plan B. They, at least up-front,  
14 indicated that they too had thought about a Plan B. But when  
15 it really came down to it, it was very difficult to start  
16 engaging with particular -- with the debtors and the debtors'  
17 financial advisor on actually modeling out a Plan B, how it  
18 would look.

19 The -- you know, the impression that we all got, and it  
20 may be more than an impression -- is that the debtors were very  
21 hesitant to take seriously a Plan B because that would mean  
22 risking the appearance that they don't feel 100 percent all in  
23 with their Plan A. And they were -- they felt like that was a  
24 risk. They didn't want to pivot away from Plan A to talk about  
25 Plan B.

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1 Q So with the Committee's concerns about Plan A and an  
2 inability to get any traction on an alternative Plan B, what  
3 was the Committee's next response to that?

4 A Well, the Committee's response was we started to look at  
5 what a Plan B ourselves, we started to look at what it might  
6 look like. And we started to have conversations with the  
7 bondholders around how they might view a Plan B, understanding  
8 that they too believed in the litigation and wanted to be  
9 successful. But then the Committee also wanted its  
10 professionals to look at what would be a last ditch, failsafe  
11 Plan C in case Plan A and Plan B didn't work.

12 Q Was the Committee able to start that dialogue with the  
13 landlord about what we've been referring to as the Plan C, the  
14 worst case scenario?

15 A I would say at least from my financial standpoint, the  
16 answer is no. I realize counsel have talked at a very high  
17 level and not without any substance around a plan. There was  
18 some discussion going on, but we have not been able to engaged  
19 with the landlord on a -- call it a safety net plan.

20 Q Okay. And what kind of things would -- what kind of  
21 things is the Committee interested in developing for a Plan C  
22 safety net plan? What is the Committee looking to --

23 A So --

24 Q -- create?

25 A So we need to understand what the exit looks like in big

1 buckets.

2       The Committee needs to understand the financial  
3 obligations that any sort of an exited or restructured Edgemere  
4 would be left with, obligations that are both call it bond  
5 debt, as well as resident obligations. And also importantly,  
6 maybe more importantly than that, how a plan is going to be  
7 funded, the cash required at the effective date of a plan, or  
8 if even you just think about it as outside of a plan context.

9       The Edgemere is going to need capital in order -- we're  
10 going to need working capital in order to bridge operations  
11 from a date of a hypothetical exit to at some point where it  
12 stabilizes. They're also going to need capital investment to  
13 improve their competitiveness.

14       So there's just a significant initial cash need at exit  
15 and, you know, the residents don't have the ability to fund  
16 that themselves, so they're interested in whoever a plan  
17 proponent of a Plan B or a Plan C, how much money they're  
18 willing to bring to the operations, and whether or not they're  
19 willing to commit to that.

20 Q     And let's turn to information available. Has the  
21 Committee been satisfied with the information being provided by  
22 the debtor to fulfill its fiduciary duties?

23 A     You know, I would say the biggest concern that I've had is  
24 really the timeliness.

25       You know, my impression is the debtor is trying to -- you



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1 know, they never say, no, we're not going to provide that to  
2 you. They'll say, you know, we'll provide it on professional  
3 eyes only where we can't discuss it with our Committee members.  
4 Various projection models that we've requested from the  
5 debtors' financial advisors, they've not said no, but it's come  
6 way late. It's very -- you know, it's frustrated our ability  
7 to get our arms around what a Plan B might look like on a  
8 timely basis.

9 And, you know, there have been one or two things that they  
10 just have not provided. You mentioned earlier in the hearing  
11 about a administrative solvency analysis. We've asked for that  
12 and one's not been provided.

13 Q Okay. So the Committee's objected to any extension of the  
14 existing exclusivity. What does the Committee hope to achieve  
15 to advance the case forward if exclusivity is allowed to run  
16 out?

17 A The Committee would like to encourage the creative  
18 thinking and perhaps some competition amongst those who would  
19 be interested in proposing a plan to get to as good of a Plan B  
20 potential option as possible. And failing that, the Committee  
21 would like to be able to engage with the landlord around a  
22 safety net plan in the event that the case fails.

23 Q Has there been any positive developments in the  
24 negotiations of Plan B with any major parties in the case in  
25 the last two weeks?

1 A Yes.

2 I think good progress is made, has been made. In  
3 particular, yes, I would say in the last two weeks, a lot of  
4 good progress even in the last week.

5 Q And --

6 A So we've been encouraged by that. Yeah. Go ahead.  
7 Sorry.

8 Q And has the Committee started negotiations with the  
9 bondholders about a possible bondholder Plan B?

10 A I would say yes.

11 You used the term negotiations. I think I would more  
12 characterize it as discussions at this point. We look forward  
13 to engaging with the bondholders' financial advisor to  
14 understand more about the financial underpinnings of what  
15 they're -- of their thinking at the moment.

16 There hasn't really been an exchange of term sheets, per  
17 se, but there's good dialogue started there. And I would thank  
18 the bondholders for putting them -- putting the thought that  
19 they have into a potential Plan B.

20 Q Okay. And how about with the Lifespace sponsor? Have  
21 there been any development there?

22 A Yeah.

23 So it's my understanding, and Mr. McCartin, you know I  
24 wasn't on that phone call, but the -- but counsel for Lifespace  
25 has initiated conversations through the Committee's counsel on

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1 some, I'd say contours of their thinking that also seemed very  
2 promising.

3 Again, we don't have a business plan, financial  
4 projections, anything that would help us evaluate feasibility.  
5 And it was on a very preliminary basis, but those conversations  
6 were promising.

7 MR. McCARTIN: Okay. I have no further questions of  
8 this witness, Your Honor. Thank you.

9 THE COURT: Thank you, Mr. McCartin.

10 Mr. Johnson, cross-examination.

11 MR. JOHNSON: Thank you, Your Honor. Jeremy Johnson  
12 from Polsinelli.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q Good afternoon, Mr. Robichaux. Just a question or two.

16 I thought I heard you testify, and if I didn't hear you  
17 right, I'd like you to sort of explain it. You said that the  
18 Committee asked you to model out a Plan B? Is that how that --

19 A Yes, the Committee asked.

20 Q Okay. They asked you to model out a --

21 A I'm sorry. Go ahead.

22 Q -- Plan B?

23 A They asked what capabilities we had of doing our own  
24 modeling. Yes, they did.

25 Q Uh-huh. And did you have -- did you model out your own

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1 Plan B for on behalf of the Committee?

2 A We started a model. What we really would prefer to do,  
3 and I've shared this with FTI, is sort of understand their  
4 baseline operational modeling in order to be sure that we don't  
5 have an initial misalignment of operational expectations. But  
6 yeah. We've got a working model at the moment that we are  
7 using to evaluate proposals and advise the Committee.

8 Q And was this the model that FTI provided to you at your  
9 request?

10 A No.

11 Q But you did request that FTI provide the Plan B model. Is  
12 that correct?

13 A We did.

14 Q And did you receive that model from FTI?

15 A After an extended delay, we did receive the model. Yes.

16 Q Okay. And then did you have subsequent conversations with  
17 FTI about potential changes to the model?

18 A We did.

19 Q And did FTI revise the model and provide the Committee  
20 with a revised Plan B?

21 A I don't know the answer to that question.

22 Q Okay.

23 A I know we have an FTI model. I don't know if they've  
24 submitted to us a revised model.

25 MR. JOHNSON: Okay. That's all I have, Your Honor.

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1 Thank you.

2 THE COURT: Thank you very much, Mr. Johnson.

3 Mr. Bleck.

4 MR. BLECK: Yes. Just a couple of questions.

5 CROSS-EXAMINATION

6 BY MR. BLECK:

7 Q Good afternoon, Mr. Robichaux.

8 A Good afternoon.

9 Q So I believe you testified previously that you thought  
10 there was a benefit to having a bit of a competition associated  
11 with a Plan B. Can you expand on that?

12 A Yeah. I mean, the bondholders have an idea on how the  
13 Committee could be restructured and where operations are  
14 preserved and residents are not displaced. Lifespace has an  
15 idea about how that might work. The Committee ourselves, we  
16 may have an idea. We don't have the wherewithal to fund it,  
17 but we may have an idea. So, and the debtor obviously has a  
18 plan on file and I'm sure they've got ideas on their plan as  
19 well as perhaps how to amend the plan.

20 So what we -- what the Committee wanted to avoid is the  
21 parties with ideas and potentially the wherewithal to propose a  
22 plan would not be allowed to do so. So we felt like -- we felt  
23 like unencumbering those parties to be able to talk about,  
24 negotiate, and perhaps file their competing plans would be good  
25 for the residents. I don't want to leave out the landlord.

1 The landlord may frankly have an idea on a competing plan. So  
2 we wanted to encourage a robust level of conversation and  
3 perhaps encourage some competition.

4 MR. BLECK: Thank you, Your Honor. That's all I  
5 have.

6 THE COURT: Thank you very much, Mr. Bleck.

7 MR. McCARTIN: No additional questions. Thank you.

8 THE COURT: Ms. Vandesteeg, any questions for the  
9 witness? Okay. Thank you.

10 And no further redirect? Okay. I thank you very  
11 much, Mr. Robichaux, for your testimony today.

12 THE WITNESS: Your Honor, I very much apologize for  
13 being a little tardy. Sorry about that.

14 THE COURT: Oh, that's fine. We've -- you should  
15 have seen yesterday. We lost an entire day with technical  
16 difficulties, so a few minutes late will not be a problem.  
17 Thank you very much, Mr. Robichaux. Have a great day.

18 THE WITNESS: Take care. Thank you. Bye.

19 (Witness excused)

20 THE COURT: Alrighty. Mr. Johnson, obviously we took  
21 the Committee's witness first for scheduling purposes.

22 Would you like to call your first witness?

23 MR. JOHNSON: Yes, I would, Your Honor. Well, Your  
24 Honor, I'd like to start by saying that we have -- we did file  
25 a declaration of Mr. Shandler --

1 THE COURT: Yes.

2 MR. JOHNSON: -- yesterday. It's relatively short.  
3 He is available. Mr. Shandler, if you could say, testing,  
4 testing, so you pop up on the screen, please.

5 MR. SHANDLER: Okay. Testing, testing.

6 MR. JOHNSON: You might want to turn your camera on  
7 as well, Mr. Shandler.

8 MR. SHANDLER: On my screen, everything is fine.

9 MR. JOHNSON: It looks like a laptop, so.

10 THE COURT: Let's see what we have.

11 MR. SHANDLER: One moment. Everything looks like  
12 it's on, so.

13 THE COURT: Okay. Right. Okay.

14 MR. SHANDLER: Sorry. Just give me one moment.

15 THE COURT: There we go.

16 MR. SHANDLER: Ah, there we go.

17 THE COURT: Thank you very much.

18 MR. SHANDLER: That's what happens when somebody uses  
19 your office.

20 MR. McCARTIN: Your Honor, this is probably the  
21 correct time. The Committee would object to Mr. Shandler's  
22 testifying. We also object to his declaration and the  
23 financials attached thereto. We've been asking --

24 THE COURT: Let me understand. You object to him  
25 testifying altogether?

1 MR. McCARTIN: No, ma'am.

2 THE COURT: Oh, okay.

3 MR. McCARTIN: We object to the admission of his  
4 declaration and to the admission of the exhibits attached to  
5 his declaration. And they were just recently added last night  
6 to the witness exhibit list. And I guess I should restate  
7 that.

8 Technically, we object to him testifying. Exhibits  
9 and witness lists were due Monday. Their original list filed  
10 on Monday did not list him as a witness. Only last night at  
11 4:45 or 5:00 was an amended witness and exhibit list filed, at  
12 which Mr. Shandler was added along with his declaration and the  
13 financials.

14 And we've been asking for a solvency analysis from  
15 the debtor for a month in writing and orally and none was  
16 provided. None was provided Monday. He wasn't listed as a  
17 witness on Monday. You know, it's kind of a pattern of  
18 information flow. So we'd object to him testifying at all and  
19 certainly object to his declaration and the attachments.

20 THE COURT: Thank you very much, Mr. McCartin.

21 Mr. Johnson.

22 MR. JOHNSON: Your Honor, first I would say that when  
23 the witness and exhibit list was filed on Monday we were still  
24 formulating our plan on what to do. We had a meet and confer  
25 on Monday that Mr. McCartin attended along with a number of



1 other people, Counsel for ICI, a number of people. I told them  
2 that we had a witness and the witness would be Chad Shandler.

3 We do have the catch-all on that particular witness. We  
4 don't need to use the declaration, Your Honor. We'll just do a  
5 direct Q&A. I have Exhibits A and B. We'll use them as  
6 demonstratives and not seek to have them admitted into  
7 evidence, but I think it's perfectly reasonable.

8 Everybody knew that Mr. Shandler was going to be our  
9 witness and he was going to provide testimony. We have him  
10 designated for both motion to dismiss and this, Your Honor,  
11 because the facts are basically the same. And so that's what  
12 he's prepared to talk about.

13 THE COURT: Alrighty. So if he was always your  
14 witness, why was he never on your witness and exhibit list?

15 MR. JOHNSON: I don't know that he made it on the  
16 very -- on the first list that we filed, Your Honor, but --

17 THE COURT: I'm looking at the exhibit list that we  
18 referenced earlier when I admitted A through S.

19 MR. JOHNSON: Yeah. Your Honor, it was just an  
20 oversight as to why he wasn't listed. Again, the very day we  
21 filed this we told everybody he was going to be our witness.

22 MR. McCARTIN: I think that meet and confer was  
23 Tuesday afternoon.

24 MR. JOHNSON: Okay.

25 MR. McCARTIN: So a day after the exhibit and witness

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1 list was due.

2 MR. BLECK: That's correct, Your Honor.

3 THE COURT: Well, Mr. Johnson, I'm going to give you  
4 a little bit of leeway here and I'm going to allow him to  
5 testify. I'm not going to allow him to testify obviously by  
6 declaration. And when we get to the various exhibits we'll  
7 have to make a gametime decision on those.

8 Your motion's been on for a while. If he was going  
9 to be your witness for a while, if that was the assumption, he  
10 should have been on your witness and exhibit list.

11 So, like I said, we will rule up or down on those  
12 exhibits when we get to them and see how the debtor intends to  
13 use them, but in the future, let's list our exhibits. I've  
14 seen folks recently playing a little coy with, well, any  
15 witness that I need for any document. That's not a witness and  
16 exhibit list.

17 And so I am seeing a -- I don't want to say you're  
18 hiding the ball with your witnesses. I do believe that there  
19 probably would have been an assumption it was going to be Mr.  
20 Shandler given the history of this case, but let's do the  
21 necessary.

22 MR. JOHNSON: We will, Your Honor. We apologize  
23 again. It was an oversight as to why they weren't on there,  
24 why he wasn't listed on there originally. I think parties do  
25 routinely update it.

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1 It wasn't an attempt to sandbag anybody. It wasn't  
2 like we were holding on to these exhibits for weeks. They were  
3 getting developed over the weekend during this time period. So  
4 we appreciate a little leniency here at the start, Your Honor.  
5 Thank you.

6 Your Honor, so the debtors will call Chad Shandler as  
7 their fact witness in connection with the debtors' exclusivity  
8 motion to the stand.

9 THE COURT: All right. Mr. Shandler, if you could  
10 raise your right hand for me.

11 CHAD SHANDLER, DEBTORS' WITNESS, SWORN

12 THE COURT: Thank you very much.

13 Please proceed, Mr. Johnson.

14 MR. JOHNSON: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Good afternoon, Mr. Shandler. For the record, please  
18 introduce yourself.

19 A Chad Shandler. I am the financial advisor to the debtors  
20 in these cases.

21 Q And you've testified a few times in these cases, Mr.  
22 Shandler, so we'll keep the background pretty close, pretty  
23 tight here. How long have you been employed with FTI  
24 Consulting?

25 A Four years.

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1 Q And what is your role there?

2 A I'm a senior managing director and co-leader of their  
3 healthcare restructuring practice.

4 Q Could you please summarize for the Court your experience  
5 in the distressed healthcare space, particularly with CCRCs?

6 A Certainly. For almost 17 years now, most of my time has  
7 been spent within the healthcare restructuring arena, in  
8 particular with a specialty in senior housing. Within the  
9 senior housing arena, that has included continuing care  
10 retirement communities like the debtors, as well as independent  
11 living, assisted living, memory care, and skilled nursing  
12 facilities. Over the period of time I've probably worked on  
13 close to 60 restructurings or evaluations of CCRCs.

14 Q And for the record, when were you retained by Edgemere and  
15 SQLC in these cases?

16 A I was retained by counsel to Edgemere in February of 2021.  
17 SQLC was not an affiliate party to any of the work we were  
18 doing until April of 2022.

19 Q Thank you. So let's turn initially to the issues  
20 regarding the DIP budget. Did FTI work with the debtors to  
21 ascertain the amount of post-petition financing that would be  
22 needed to fund the debtors through the end of this calendar  
23 year?

24 A Yes, we did.

25 Q And in negotiating the size of the DIP, did you anticipate

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1 any operating losses?

2 A Yes, we did.

3 Q And did FTI work with the debtors to prepare an initial  
4 budget?

5 A Yes.

6 Q And was that budget approved by the Court?

7 A It was.

8 Q And when did that budget expire?

9 A On or around August 7th, I believe, 2022.

10 Q Did FTI work with the debtors to prepare a new budget?

11 A Yes, we did.

12 Q And how far does that budget go to?

13 A That one goes through the weekend in November 13, 2022.

14 MR. JOHNSON: Now, Your Honor, this is where I'd turn  
15 to Exhibit A to Mr. Shandler's declaration and ask that the  
16 Court consider this as a demonstrative exhibit.

17 MR. McCARTIN: We object, Your Honor. We don't think  
18 it's a demonstrative. It's a financial projection that we've  
19 been asking for for a month and should have been -- the witness  
20 exhibit list should have been exchanged. This is just a back  
21 door for getting in an exhibit that was not listed on the  
22 witness and exhibit list and clearly is not a chart or a  
23 summary of complex information that we have access to. This is  
24 brand new financial document.

25 MR. JOHNSON: Well, Your Honor, it is, in fact, a

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1 summary of the budget to actual to date, the performance to  
2 budget, budget to actual through this case, through today under  
3 the original initial DIP budget and the amended DIP budget. So  
4 it is, in fact, a summary of a very complicated document.

5 THE COURT: Is this an updated version of any sort of  
6 budget that's already in your exhibits?

7 MR. JOHNSON: This is -- this is not. This is not  
8 the actual budget. This is just a summary of the performance  
9 from the petition date through the six week period ending on  
10 September 18th.

11 THE COURT: Mr. Johnson, how do you explain that  
12 we're seeing this for the first time the day before the  
13 hearing?

14 MR. JOHNSON: Well, Your Honor, this is -- I mean,  
15 again, this was being prepared as in response to the various  
16 motions, both the motion to dismiss and the motion for  
17 exclusivity that were teed up for today that put solvency  
18 directly to this. The most recent document filed in the  
19 context of the motion to dismiss, Your Honor, was a financial  
20 analysis by the financial advisor to ICI. And this is prepared  
21 in response to that. We didn't have an opportunity to file it,  
22 but it was done. And it wasn't -- it was something that was  
23 just finished on Tuesday, Your Honor.

24 And again, Your Honor, it's just being used as a  
25 summary. I mean, I can have him testify about the contents of

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1 it generally as without actually relying upon the exhibit. He  
2 can say the same sort of thing. It's just easier for people to  
3 follow along if they see what his numbers are.

4 THE COURT: Mr. McCartin, anything further?

5 MR. McCARTIN: I'm not sure what he just said. We  
6 prepared our exhibit after the deadline and that's why we don't  
7 have to exchange them on a timely basis. I don't think that's  
8 an excuse. I think this is a new exhibit. And again, you  
9 know, we want to be collaborative. We want to be productive.  
10 We've been asking for a month for this kind of information.  
11 And it's not fair to bring it out at 5:00 the night before.

12 And, Your Honor, I have emails where, you know, I  
13 have copies of emails where we've requested this information a  
14 month ago.

15 THE COURT: As you might imagine, I -- literally the  
16 last thing I want to see, but I appreciate the sentiment.

17 MR. McCARTIN: They're riveting.

18 THE COURT: I'm sure they're titillating.

19 Again, Mr. Johnson, I gave you some leeway before.  
20 I'm going to allow Mr. Shandler to testify, but I can't  
21 necessarily allow the exhibit in. I mean, we -- as you've  
22 heard and I know you've taken to heart, there's obviously a big  
23 sentiment that has been percolating over at a minimum the last  
24 month about the flow of information.

25 And from the Court's perspective, all I do is

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1 obviously enforce what court deadlines and the exhibit deadline  
2 came and went. And if at a minimum there would have been a  
3 placeholder for a budget to come or something along those  
4 lines, but in the context of why we're here and when the  
5 exhibit should have been prepared, I have -- I don't think I  
6 have any choice but to sustain the Committee's objection.

7 MR. JOHNSON: Understood, Your Honor, and thank you.  
8 And, Your Honor, we think we will address some of these  
9 information flow issues as part of -- first of all, Mr.  
10 Shandler will testify to that in a little bit, but we'll also  
11 be addressing it as part of the argument. There are some  
12 narratives being spun here in various ways. And, as everybody  
13 knows, there's slightly different shaded versions of the truth  
14 and you've got to hear a couple of them. You haven't heard the  
15 debtors' yet, but hopefully we'll get that opportunity after  
16 we're done with the testimony.

17 THE COURT: Fair enough.

18 MR. JOHNSON: But thank you, Your Honor. I  
19 appreciate it. Again, it's just a few questions, Your Honor.  
20 We're not trying to go into deep detail here about it.

21 BY MR. JOHNSON:

22 Q Mr. Shandler, are you familiar with the debtors'  
23 performance to budget to date during these Chapter 11 cases?

24 A Yes, I am.

25 Q And can you give a high level summary of the debtors'



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1 performance to budget to date?

2 A Yes. Obviously, we've had two different budgets. One, as  
3 you indicated, Mr. Johnson, which was the initial DIP budget,  
4 and then there was an amended DIP budget after the initial one.  
5 The time period associated with that had expired. Every two  
6 weeks, which is what we are required to do under our DIP  
7 financing documents, we prepare a budget to actual report with  
8 company's management and their management company monitoring  
9 the performance of the debtor from a cash receipts and  
10 disbursements perspective to, again, what the DIP budgets,  
11 again, based on the cash receipts and disbursements perspective  
12 is.

13 For the initial budget term and actually consistently for  
14 the amended budget term, our cash -- debtors' cash receipts  
15 have been within 1 percent of what had been budgeted. So I  
16 would say that variance has been very good. As it relates to  
17 the debtors' operating disbursements, in the initial budget we  
18 were actually about 18 percent under budget, in large part due  
19 to the fact that when the budget was originally prepared as it  
20 is in many debtor cases, we don't necessarily assume that we  
21 will be receiving terms from our vendors immediately and we  
22 will be operating on a cash and advance or COD basis.

23 In this case, fortunately, during the 13 week period of  
24 time, we did receive or the debtors did receive terms from many  
25 of its vendors that allowed us to have our disbursements under

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1 what we anticipated to be on an operating basis. And for the  
2 amended budget period, we were within 3 percent of what was  
3 anticipated from our operating disbursements.

4 Q Thank you, Mr. Shandler. And so, would it be your  
5 opinion, would it be your view, Mr. Shandler, as a financial  
6 advisor to the debtors, are they generally paying their  
7 obligations as they come due while in bankruptcy?

8 A Yes. They are.

9 Q And to your knowledge, have the debtors been made aware of  
10 any defaults under the DIPS, under the DIP, the existing DIP?

11 A No.

12 Q Thank you.

13 A No. They were -- I'm not aware of any.

14 MR. JOHNSON: I just have one more question regarding  
15 budgets, Your Honor, and then -- and we're not going to turn to  
16 Exhibit B for obvious reasons.

17 BY MR. JOHNSON:

18 Q So, but Mr. Shandler, are you familiar with the  
19 projections for cash use from now through December 31st of this  
20 year?

21 A Yes. I am.

22 Q And can you say generally how you expect the budget to --  
23 how you expect Edgemere to perform to budget for the balance of  
24 the year?

25 A Well, based upon our budgeting to date, I would hope that

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1 the -- without any unforeseen events, that the debtors would  
2 continue to operate and monitor their receipts and  
3 disbursements consistent with how they've done in the past and  
4 by the end of -- or by December 31, 2022, the current budget  
5 would project that we would have roughly \$800,000 cash on hand  
6 as well as \$800,000 of availability under our DIP by DIP  
7 financing.

8 Q Thank you, Mr. Shandler. So I'll move on now to a couple  
9 of, I guess some sort of miscellaneous facts about the debtor.

10 THE COURT: One question just for clarity. When you  
11 say \$800,000 of cash on hand and \$800,000 available under the  
12 budget, is that a singular \$800,000 or is that a total of \$1.6  
13 million?

14 THE WITNESS: That is a total of \$1.6 million.

15 THE COURT: Thank you very much.

16 MR. JOHNSON: Thank you.

17 BY MR. JOHNSON:

18 Q So, Mr. Shandler, is it your understanding and belief that  
19 debtors are working on obtaining additional funding for post  
20 12/31?

21 A Yes. They are speaking with parties.

22 Q And how much would you estimate that the debtors need to  
23 get through the first quarter of 2023?

24 A Including the payment of the property taxes, by the end of  
25 January of 2023 as opposed to delaying that payment and taking

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1 penalties would be roughly \$6 million.

2 Q Can you, for the record, Mr. Shandler, describe the  
3 Edgemere facility in terms of the number of employees and  
4 residents?

5 A Certainly. Number of residents is roughly, both first and  
6 second residents, around 380 residents, so just under 400  
7 residents, and roughly about 300 employees.

8 Q Would you describe Edge -- would you describe CCRCs  
9 generally as operationally and financially complex businesses?

10 A Yes, I would.

11 Q Is Edgemere any more or less complex than your typical  
12 CCRC?

13 A I would say given the fact that the Edgemere has a ground  
14 lease inherently does make that capital structure and  
15 operations more complex than most other CCRCs that we've --  
16 that I've worked on.

17 Q And how would you describe the Chapter 11 cases in terms  
18 of the magnitude of debt?

19 A Considering the type of community the Edgemere is and  
20 comparing it to similar size or similar also luxury high end  
21 communities, I would say that the debt is comparable with other  
22 similar type facilities.

23 Q Okay. And so switching gears a bit, we're going to start  
24 trying to talk about this alternative paths. You heard the  
25 testimony from Mr. -- well, first of all, we'll start with, you

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1 know, when -- did FTI start working with the debtors to assess  
2 alternative business models pre-petition?

3 A Yes. We did.

4 Q And approximately when did you begin to assess these  
5 different kinds of models?

6 A February of 2022.

7 Q And so you evaluated those options prior to the filing of  
8 the case. Is that correct?

9 A That is correct.

10 Q And have you continued these efforts since the petition  
11 date?

12 A Yes, we have.

13 Q And please sort of describe -- describe the buckets of  
14 information that you shared with the Committee and their  
15 financial advisors.

16 A We actually have been very active in participating -- in  
17 sharing information as requested with the Committee's financial  
18 advisors as they have asked for. Every one of the scenarios  
19 that were run or evaluated pre-petition and were shared with  
20 the unsecured creditor Committee's professionals, as well as  
21 the underlying business model related to what was attached to  
22 the plan of reorganization and what that has been based on. We  
23 have actually provided it to them not just in hard copy, but in  
24 working models, which is somewhat unusual.

25 As you can imagine, handing over a working model to a

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1 competitor is not something that we necessarily normally do,  
2 but in the interest of cooperation and working together and  
3 trying to reach an amicable outcome, that information and those  
4 models were shared with the UCC's financial advisor. When the  
5 UCC did ask for an updated of what they call Plan B, while Mr.  
6 Robichaux says that it was after a lengthy delay provided to  
7 him, I would argue with regard to his view with regard to time  
8 periods and well aware of the amount of time it takes to update  
9 financial information, prepare projections, and the like. But  
10 that new Plan B, as they call it, was provided to them with  
11 additional analyses as well and that working model was also  
12 provided to them as well as we participated in multiple follow  
13 up calls not with Mr. Robichaux but with those reporting to  
14 him, including Mr. Michael Morton.

15 Q Thank you, Mr. Shandler. One last question. Do you  
16 believe the debtors would benefit from having additional time  
17 to consider alternative paths?

18 A I do.

19 MR. JOHNSON: Thank you. That's all I have, Your  
20 Honor. Reserve.

21 THE COURT: Thank you, Mr. Johnson.

22 MR. JOHNSON: Yeah.

23 THE COURT: Mr. McCartin.

24 MR. McCARTIN: Thank you, Your Honor.

25 CROSS-EXAMINATION

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1 BY MR. McCARTIN:

2 Q I want to talk about first information flow. I'm taking  
3 it in reverse priority, I guess. You had mentioned that you  
4 thought -- I guess your testimony is you think FTI has been  
5 fairly responsive to the Committee on information requests. Is  
6 that right?

7 A That is correct.

8 Q Are you aware that the Committee's been asking for an FTI  
9 solvency analysis for the last month?

10 A I'm aware that they have requested that the debtor prepare  
11 a administrative solvency analysis.

12 Q And did you prepare one and provide it to the Committee?

13 A We have not prepared one at all.

14 Q Okay. Did you provide cash flow projections through the  
15 end of the year to reflect ability to pay debts as they become  
16 due?

17 A To the best of my knowledge, yes.

18 Q Did you provide that to Committee?

19 A To my recollection, yes.

20 Q Is that just -- if I represented to you that I didn't --

21 A Yes. Those projections have been provided to the  
22 Committee. Yes.

23 Q Do you know when and could you -- would you agree to send  
24 me copies?

25 A Well, Mr. McCartin, you actually asked for the draft of

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1 that exhibit to be shared today, so I would suggest that you  
2 actually have a copy of what the projections you're asking for.

3 Q I asked for a draft of today's -- I'm sorry. Could you  
4 say that again?

5 A No. You asked for -- you asked for the projections that  
6 the debtor had prepared in this case actually through March of  
7 31 to be able to use that as an exhibit today.

8 Q Okay. I see where the -- we're mis --

9 A So that would suggest that you have a set of projections  
10 that go through the end of the year.

11 Q I'm sorry. You're exactly right. I've seen your budgets  
12 that you've -- let's call those budgets. Maybe I'm calling  
13 things incorrectly. You have budgets that you filed with the  
14 Court. You testified there has been two budgets filed with the  
15 Court, correct?

16 A That is correct.

17 Q And certainly I've seen those. And those go through  
18 11/15, I think you said.

19 A Or 11/13.

20 Q Okay. And then you have also prepared a budget going  
21 through March 31st of next year that reflects your cash need of  
22 an additional \$6 million, correct?

23 A That is correct.

24 Q And that has been provided to the Committee marked  
25 confidential, which is the sealed exhibit we're talking about



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1 today, correct?

2 A Well, that was -- you were asking for being provided for,  
3 you know, cash flow projections through the end of the year and  
4 that we had not provided them. And what I'm indicating is that  
5 your request to use a set of projections that were already  
6 under seal, that includes that time period which suggests that  
7 you have those projections.

8 Q So if I have the March 31 projections that show the  
9 additional need of \$6 million, I don't need to be looking at  
10 what you were trying to bring to Court today as Exhibit A and B  
11 to your declaration? That these are interchangeable?

12 A I would need to confirm the dates of which everything was  
13 prepared, but generally speaking, yes.

14 Q Oh.

15 THE COURT: Mr. McCartin, we're either not going to  
16 use those exhibits or we're going to use the exhibits. I think  
17 that we're creating a bit of a muddled record by references to  
18 sealed exhibits that we only spoke of generally in connection  
19 with the motion and then by reference to exhibits that you  
20 objected to and he's only testified about raw data to, so.

21 MR. McCARTIN: Right. I --

22 THE COURT: Let's --

23 MR. McCARTIN: Yeah. I understand. We got a little  
24 bit afar. My point, Your Honor, was the testimony was I think  
25 from Mr. Shandler, I think we've been providing information to

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1 the Committee on a timely basis. My response was, but we asked  
2 you for solvency analysis. The kinds of things you tried to  
3 introduce today, we asked you a month ago and we didn't get  
4 them, which does kind of rebut that testimony that we're  
5 getting things timely. I think his testimony was, well, I gave  
6 you a March 31 budget and that's as good as what you asked for.  
7 But I'll move on, Your Honor. It's --

8 THE COURT: Well, no, Mr. McCartin. I think this  
9 point is important. You asked the witness whether or not he  
10 had provided cash flow projections.

11 MR. McCARTIN: Uh-huh.

12 THE COURT: Okay. Different from a solvency  
13 analysis. Cash flow projections. I mean, we're calling things  
14 a lot of different names and I think it starts to be  
15 meaningful, okay. He's telling you that he thinks that your  
16 request for cash flow projections was met by the provision of  
17 what you are calling a budget that goes through March of next  
18 year, okay. So now if you want to talk about a solvency  
19 analysis, let's ask those questions and see where that leads.

20 MR. McCARTIN: Fair enough.

21 BY MR. McCARTIN:

22 Q So you -- I'll start over.

23 Are you familiar? Do you know that the Committee has been  
24 requesting a solvency analysis from the debtor for about a  
25 month? Are you familiar with that?

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1 A I know that the Committee has requested a solvency  
2 analysis.

3 Q And what did you provide to the Committee, if anything, in  
4 response to that inquiry?

5 A As I previously testified, I have not prepared a solvency  
6 analysis. To the extent that underlying data that would be  
7 required for a solvency analysis has been requested from us, I  
8 believe that we have done our best to satisfy the UCC's  
9 financial advisors request on a timely manner.

10 Q Okay. That's fine. Thank you.

11 You testified about your -- you testified about the fact  
12 that actual versus budget have been pretty accurate. Is that  
13 -- am I summarizing your testimony?

14 A Yes. On an operating basis, yes, we have been very  
15 accurate.

16 Q Okay. But that -- let's see if I understand that.

17 You're saying that we've budgeted certain numbers and  
18 we've come in pretty close to those. Our actual results were  
19 pretty close to those budgets, correct?

20 A Yes.

21 Q Okay. But if any line item is going over budget, if there  
22 are accruals over the budget, that wouldn't tell us what the  
23 accruals are, would it?

24 A Well, again, this is a cash based budget, so based upon  
25 our anticipated cash disbursements and our anticipated cash

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1 receipts, that we were within our budgeted parameters.

2 Q Okay. Well, for example, I'll represent to you that the  
3 landlord has been complaining about and the Committee has been  
4 concerned about the professional fee accrual rate, not cash,  
5 but how large they might be accruing and we don't have  
6 visibility into that. Are you familiar with those concerns?

7 A I have read those concerns.

8 Q Okay. But performance of actual to budget cash doesn't  
9 really address that concern, does it?

10 A As I said, my testimony was specific with regard to the  
11 operations of the debtors.

12 As far as it relates to professional fees, it's been  
13 indicated the debtors' attorneys filed their first fee  
14 application last night and we would need to further evaluate,  
15 but I believe through July at least the budgeted professional  
16 expenses for the most part were in line with what was  
17 anticipated.

18 Q And so I'll see if I understand you right. You think  
19 actual professional fees through July are not higher than  
20 budget?

21 A I think through July they are within reason to the budget.  
22 I'd have to go back and relook at that.

23 Again, we are looking right now at a variance which is  
24 based upon cash disbursements. And no professional, as you're  
25 well aware, Mr. McCartin, is able to get -- be paid more than

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1 what has been allotted to them within the budget.

2 Q Right. Yeah. I'm not -- I don't want to wade into when  
3 they can be paid, when they can't. It's just the accrued rate  
4 and our concern, we had no visibility into it. Let me move on  
5 then.

6 I think you testified that you're projecting that on  
7 December 31st when the DIP loan matures you'll have \$800,000 of  
8 cash and \$800,000 of availability under the DIP loan, correct?

9 A Correct.

10 Q And so that's \$1.6 million kind of total working capital  
11 available at December 31. Did I say that right?

12 A Well, working capital is a bigger concept than just cash  
13 and borrowing, but there would be -- the debtor would have,  
14 presuming that that was all still available because of course  
15 the DIP does expire on December 31st, but at that point and  
16 time there would be access to \$1.6 million in cash.

17 Q Okay. On December 31st, how much do you project your  
18 accrued but unpaid accounts payable would be?

19 A Probably roughly around the \$2 million range, which is  
20 what the company has been running.

21 Q Okay. And do you have a projection of what your accrued  
22 by unpaid administrative expenses would be?

23 A I would need to look at and revise what that projection  
24 would be. I do not know off the top of my head.

25 Q Okay. And that's without accruing any 2022 real estate or

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1 real property taxes due in January, correct? Because they're  
2 not due yet.

3 A Well, they are accruing on the balance sheet, a 1/12th  
4 every month.

5 So on the balance sheet there would be an accrual for  
6 property taxes, but the cash budget would not have them being  
7 paid until January, which is when the company traditionally  
8 pays its property taxes.

9 Q Right.

10 I guess my point is I think what you're testifying to --  
11 see if I understand this correctly -- that you would have cash  
12 and availability of \$1.6, but you would have accrued but unpaid  
13 payables of \$2 million and real property taxes due of about \$2  
14 million in October, but not due without penalty until January.  
15 Is that a correct statement?

16 A Yes.

17 Q And you don't know how much of accrued administrative  
18 expenses including professional fees might be outstanding on  
19 12/31 right now, correct?

20 A I just don't recall.

21 Q Okay.

22 A I don't recall. Yes.

23 MR. McCARTIN: Yeah. Thank you, Your Honor. No  
24 further questions.

25 THE COURT: Thank you, Mr. McCartin.

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1 Mr. Bleck.

2 MR. BLECK: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. BLECK:

5 Q Good afternoon, Mr. Shandler.

6 A Good afternoon, Mr. Bleck.

7 Q So I believe you testified that for the first quarter of  
8 2023 the projected cash needs of the facility would be or  
9 borrowing for the facility would be approximately \$6 million.  
10 Is that correct?

11 A Yes.

12 Q You also testified --

13 A That would be in addition to what is -- in addition to  
14 what would have already been borrowed, in addition to the  
15 existing DIP.

16 Q Okay. And you also testified that you would -- the  
17 company was looking at alternative financing sources at this  
18 juncture. Is that correct?

19 A Yes. That is correct.

20 Q And has the company secured additional financing at this  
21 point and time?

22 A Not to my knowledge.

23 Q And in discussing those potential financing alternatives  
24 with third parties, how much are you seeking for funding from  
25 those third parties?

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1 A I have not been in direct conversation with those third  
2 parties, but the people who have been have similar budgets  
3 available. They know that the borrowing would need to be at  
4 least \$6 million.

5 Q Okay. But as you mentioned, the DIP matures at the end of  
6 December and roughly 10.1 would be outstanding at the end of  
7 December. Is that correct?

8 A No. 10.1 would have been the full commitment. As I  
9 testified, we anticipate there being \$800,000 availability  
10 under the DIP at that point and time, so it would actually be  
11 about 9.3 million would be outstanding.

12 Q Okay. So you would have to borrow 9.3 plus an additional  
13 \$6 million for the first quarter of December 2023?

14 A Actually, no. On this scenario, we would need to borrow  
15 that 800,000 plus an additional 6 million, so 6 million above  
16 the existing DIP commitment.

17 THE COURT: So 10.1 plus 6.

18 MR. BLECK: Thank you, Your Honor. I was going to  
19 ask the same question.

20 THE WITNESS: Yes.

21 BY MR. BLECK:

22 Q Okay.

23 A Yes. Yes.

24 Q Okay. Thank you. So roughly you're seeking financing of  
25 \$16.1 million for one quarter?



1 A That is correct.

2 Q Okay. And you haven't been involved directly in the  
3 conversations regarding potential funding for that 16.1?

4 A That is correct.

5 Q So your declaration is basically just an understanding  
6 based upon certain conversations with certain people that have  
7 had those conversations.

8 MR. JOHNSON: Objection, Your Honor. The  
9 declaration, I think everybody opposed to that being in  
10 evidence as well, so we can put that in with the exhibits if  
11 you'd like.

12 MR. BLECK: All right. I'll withdraw that, Your  
13 Honor. I couldn't help myself, but I'll withdraw it.

14 BY MR. BLECK:

15 Q So, Mr. Shandler, you also mentioned that the company has  
16 been exploring alternative options.

17 A Yes.

18 Q And what are those alternative options?

19 A Well, as I testified, since February of 2022, well, prior  
20 to February of 2022, the company had prepared financial models  
21 along the same lines with regard to its current business  
22 operations as an entrance fee CCRC.

23 Beginning in February of 2022, management had asked us to  
24 model out other options or other business models to determine  
25 what the potential impact of that would be on the business,

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1 both with regard to constituencies, including the residents and  
2 the bondholders and the amount of cash that would be available  
3 under those operating models, which would have included the  
4 conversion to a rental model or a hybrid model between rental  
5 and traditional contracts or what we also call amortizing  
6 contracts.

7 We looked at models that just dealt with amortizing  
8 contracts and we looked at continuing either the entrance fee  
9 model or other hybrid models for a period of time before having  
10 to convert to a different type of operating model, you know, a  
11 decade or a decade and a half from now.

12 Q Okay. And I appreciate you took a look at those models  
13 back, I think you had said in February 2022, but how about more  
14 recently? Has the debtor been looking at alternative plans?

15 A Yes.

16 I mean, obviously, as we had testified before, in  
17 particular, the unsecured creditors Committee did ask the  
18 debtors to revisit what a Plan B, as they call it, option would  
19 look like. That analysis, again, which was an analysis that  
20 had been looked at back in March and February or March of 2022  
21 was revised based upon current operations and trends that we  
22 were seeing, occupancy as well as potential cost savings that  
23 -- additional cost savings that we thought might occur given  
24 that path.

25 And that information was shared with, I believe, the

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1 Committee as well as the bondholders.

2 Q And is there a significant amount of capital, or I'll call  
3 it new money, because I don't want to confuse working capital,  
4 CapEx, those issues, but a significant amount of new money  
5 that's needed as part of that plan or any plan?

6 A I would say in terms of any plan.

7 Q Okay. And does Edgemere itself have that ability to  
8 provide that new money?

9 A No. Not to my knowledge, no.

10 Q Okay. So it's only third parties that could potentially  
11 step to the plate to provide that additional funding for that  
12 new money?

13 A To the best of my knowledge, yes.

14 MR. BLECK: Okay. I have no further questions, Your  
15 Honor.

16 THE COURT: Thank you, Mr. Bleck.

17 Ms. Vandesteeg, any cross?

18 MS. VANDESTEEL: No, Your Honor.

19 THE COURT: Mr. Johnson, any redirect?

20 MR. JOHNSON: Thank you. Thank you, Your Honor.  
21 Jeremy Johnson from Polsinelli.

22 REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q Two -- I think just two questions.

25 I know you're not supposed to say how many in case you

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1 come up with more, but just to make sure we have this in the  
2 record, you testified that you provided cash projections to all  
3 parties going through March 31st. Did FTI also provide  
4 variance reports to the Committee and all the other parties as  
5 required by the DIP order?

6 A Just to clarify, so the way I believe that the cash  
7 projections were provided to Polsinelli, yourself as counsel  
8 and that you participated in the circulation to the appropriate  
9 parties.

10 That is also typically how the biweekly variance reports,  
11 given the number of parties that they go to, we provide them to  
12 counsel and counsel distributes them accordingly to all the  
13 necessary parties.

14 Q So the Committees and the financial advisors all receive  
15 biweekly reporting on the budget to actual and they also have  
16 copies of the budgets in their possession?

17 A Yes.

18 Q Okay.

19 A To the best of my knowledge.

20 Q One last question, just to follow on Mr. Bleck's  
21 conversation.

22 So he asked you whether it would be necessary for a third  
23 party to provide the financing. Is that unusual in your  
24 experience in these cases? Do you find many CCRCs that have  
25 their capital sufficient to restructure their obligations on

1 their own?

2 A No. I do not.

3 MR. JOHNSON: Okay. Thank you. That's all I have,  
4 Your Honor.

5 THE COURT: Thank you very much, Mr. Johnson.  
6 Anything else for Mr. Shandler?

7 MR. BLECK: No, Your Honor.

8 THE COURT: Thank you very much for your testimony,  
9 Mr. Shandler.

10 THE WITNESS: Thank you, Your Honor. Happy early  
11 birthday.

12 THE COURT: Thank you so much.

13 (Witness excused)

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: Thank you, Your Honor.

16 So, Your Honor, this is going to serve as my opening  
17 statement and argument. I would like to reserve a little bit  
18 of time at the end to rebut anybody's -- any arguments that we  
19 may hear, but we'll try and make it fairly brief, Your Honor.

20 The motion to extend exclusivity sought an extension  
21 through -- yeah.

22 THE COURT: Before we --

23 MR. JOHNSON: Oh, I apologize, Your Honor.

24 THE COURT: -- start argument, is there any other  
25 evidence that any party wishes to put on?

1 MR. BLECK: No, Your Honor.

2 MR. McCARTIN: No, Your Honor.

3 THE COURT: Okay.

4 MR. JOHNSON: I apologize, Your Honor. I didn't mean  
5 to jump the gun there, so.

6 THE COURT: Fair enough. Fair enough.

7 MR. JOHNSON: To thank Your Honor. Like everything  
8 in this case, you know, the original motion that we sought, we  
9 filed, sought a 180 day extension. This is the first extension  
10 in the case since the case had been filed in April. The motion  
11 was filed before the expiration of the period, and due to the  
12 scheduling, it ended up being heard today. We asked through  
13 February 8th.

14 So we filed this motion a long time ago and obviously  
15 a lot has changed in the past couple of weeks and so we need to  
16 address that here. I would just sort of clarify from the top.  
17 We'd be seeking an extension of exclusivity for, say, 60 days  
18 at this point, not the full 180 days. We're not trying to seek  
19 exclusivity through February 8th as we originally requested.  
20 Just for clarity, that's what the ask is from the debtors'  
21 perspective.

22 But there's a lot of noise here about people wanting  
23 to talk about things and how things have changed and the sands  
24 have sort of shifted and for the first time we have the  
25 bondholders with the Committee on the other side of the debtor

1 on a particular issue. And it's a little curious, Your Honor,  
2 and this has all happened very quickly because in August we  
3 filed a plan that was supported by the bondholders and was  
4 supported by Lifespace. And in fact, Your Honor, our hands  
5 have effectively been tied. The debtors hands have been tied  
6 by the existing DIP financing since the bankruptcy case was  
7 filed.

8           The original bankruptcy, the original DIP financing  
9 required -- it would be a default for us to submit a plan that  
10 the bondholders did not consent to. That would have been an  
11 immediate default under our DIP and caused a problem. We also  
12 had milestones under there by which we had to file a plan.

13           So we had three parties effectively, you know, arm  
14 and arm throughout this case and it took a long time for us to  
15 negotiate this. It was being negotiated prior to the filings.  
16 I mentioned it several times over the course of this week.  
17 Eventually got to a conclusion where we had this grand plan  
18 that would restructure everything. It would restructure the  
19 existing debt.

20           It provided for the infusion of \$50 million in new  
21 capital. And it kept the residence claims completely  
22 unimpaired, right.

23           So the Committee was not part of those negotiations  
24 during that process and that's essentially why they weren't  
25 part of that process. The bondholders were supportive of the

1 litigation. They were supportive of funding the bankruptcy to  
2 continue the litigation. They were supportive of the plan.

3 Now, and not just supportive, Your Honor. They  
4 effectively were -- the threat to the debtor was that if we  
5 didn't do this, if we did some other thing then we could  
6 potentially lose our access to the money that is critical to  
7 operate the community.

8 And so, Your Honor, when you look at sort of where we  
9 got -- what progress we made with respect to the plan, we made  
10 an awful lot of progress. Now, we understand in the last  
11 couple of weeks everybody is sort of saying now we want to  
12 consider other alternatives.

13 Maybe we don't like that plan anymore. Maybe we  
14 don't want to wait until February. A December trial would have  
15 been okay, but a February trial, well, that just messes  
16 everything up. And that's fine if that's what people want to  
17 do. People are entitled to it.

18 We don't have any lockup agreements here, Your Honor.  
19 There's no restructuring support agreement. There's nothing  
20 that forces folks to fit into any one particular -- to follow  
21 this plan. This is just an idea. And the plan is complicated  
22 and requires significant financial commitment.

23 And we understand that the plan has a contingency  
24 related to litigation and that has always been an issue, right.  
25 We had to assume something about the litigation and we assumed



1 a successful outcome would be these two particular things. And  
2 Lifespace and Edgemere and the bondholders were aligned in that  
3 particular assessment at the time.

4 So that's where we were, Your Honor. I thought we  
5 made an awful lot of progress on the plan side of things, but  
6 things have changed now. So what has changed?

7 So, first of all, again, we'll talk about the factors  
8 in a minute. There's not a lot of talk about the factors in  
9 the briefs outside of ours because nobody wants to talk about  
10 the fact that every single one of the factors traditionally  
11 considered an extension for exclusivity support an extension  
12 for exclusivity here.

13 Everybody wants to talk about something else. And  
14 the something else is the cash. We need to have funding  
15 available to be able to fund this process. And that's fine.  
16 That is important. That's a practical real-world  
17 consideration, even if it's not on the list of your traditional  
18 factors of cause.

19 But the second part everybody wants to talk about are  
20 the plan alternatives. So everybody wants to talk about plan  
21 alternatives, but nobody has a plan alternative at this point,  
22 Your Honor. Nobody stood up here and said they had a term  
23 sheet. Even the Committee has characterized everything as very  
24 preliminary negotiations. Mr. Robichaux testified to that, as  
25 well, that these negotiations with Lifespace and with the

1 bondholders are very preliminary. These are just ideas.

2           So people are saying, well, we want to terminate  
3 exclusivity so we can bring all these ideas to the front. But,  
4 Your Honor, there's not a -- that's not a traditional  
5 consideration for exclusivity. In fact, it's the opposite of  
6 that in most cases.

7           Exclusivity is designed to prevent every single idea  
8 from being thrown into court and to drive up the costs  
9 associated with that. If we ended up in a competing plan  
10 scenario where we have the original plan, the bondholder plan,  
11 the Committee plan, Lifespace plan, a landlord plan.

12           I mean, everybody is concerned about administrative  
13 expenses in the case, as are we. That's going to -- nothing  
14 will implode your administrative fee budget more than having a  
15 contested plan fight, especially over multiple budgets.

16           So what we're asking for now, Your Honor, is that we  
17 need an extension. We're not asking for an unreasonably long  
18 extension. We're not asking for the original 180 days because  
19 we recognize we have to solve the funding problem. We're  
20 asking for a short extension of approximately 60 days.

21           It is great that people want to talk about other  
22 ideas, and maybe the idea that we originally had is now going  
23 to go by the wayside and we're going to talk about other  
24 things. That doesn't justify opening up an exclusivity. Those  
25 conversations can all occur.

1 Nobody is prevented from having a conversation with -  
2 - the Committee can talk to the bondholders about a bondholder  
3 plan. The Committee can talk to Lifespace and the debtors  
4 about a Lifespace debtor Committee plan. Other parties can  
5 talk to anybody about various plans. There's no confirmed plan  
6 here. There's no solicitation problem that anybody is running  
7 afoul of.

8 And if and when it comes to a point, Your Honor, that  
9 consensus builds behind one of these other plan options, then  
10 that is the appropriate time by which you say, okay. WE have a  
11 plan. The debtor is not getting behind it, but the Committee  
12 and the bondholders, we have a solution. Here's a solution.

13 We're ready to go, Judge. They will show up with a  
14 term sheet and they will say, we want to put this plan on file  
15 and the debtor can't get behind it. We disagree with their  
16 decision, so we'd ask you to terminate exclusivity. That is  
17 when you consider this sort of thing, not when there are just  
18 ideas floating around. And, in fact, Your Honor, we cited a  
19 case with respect to that.

20 But, again, Your Honor, a lot of new information, a  
21 lot of new things happening that we believe that this new  
22 information and new decisions and pivots that people are taking  
23 is a further justification to extend exclusivity, to allow this  
24 stuff to shake out a little bit. There's even a lot happening  
25 in the last couple of days, Your Honor. You heard about it

1 where there have been meetings all over town and people have  
2 been on the phone, you know, even during the holidays trying to  
3 get to this.

4 But at the end of the day, Your Honor, you know, the  
5 bondholders are claiming that they don't like the existing plan  
6 because the two month delay. We think that there was always  
7 going to be necessarily some additional delay at the end of  
8 this. There's no way we were going to have a trial in December  
9 and you were going to rule \$100 million judgment and then ICI  
10 was going to hand us a check and then we could just walk out  
11 with a confirmed plan.

12 There was going to be a lot of stuff to do after  
13 that. We always recognize there's appeals. There's going to  
14 the district court. There's all that particular risk. That  
15 risk hasn't changed by the budget changing from December -- by  
16 the trial changing from December to February. That time's  
17 there. It is just pushed back a couple of months to where it  
18 goes into 2023.

19 And with respect to he financing, Your Honor, with  
20 respect to the financing, we've made efforts towards that.  
21 There was no secret about it. There is a logical party who has  
22 an interest in this case who would be motivated to provide the  
23 financing, and that is the parent of Edgemere. There is no  
24 deal in place, Your Honor, but we've been discussing with them  
25 since the pivot from the bondholders away from the existing

1 plan and tying financing to giving them the right to bring  
2 their own plan.

3 And then the Committee stands up, Your Honor, and  
4 they complain and they say we're concerned about it. We don't  
5 like the current plan. We think it's a bad plan, even though  
6 it provides 100 percent recovery for our clients.

7 But I understand that they have concerns regarding it  
8 and I understand that they want to talk about it, but at the  
9 end of the day, Your Honor, that doesn't justify terminating  
10 exclusivity to make this a free for all with anybody submitting  
11 their entire plan over the course of this problem, over the  
12 course of the next few months. We think there should be some  
13 time here, allow these ideas to coalesce. Allow -- if there's  
14 a coalition builds behind a new plan, you know, hopefully we  
15 can all get behind it and put that plan in place, Your Honor.

16 On top of this, Your Honor, and I'll just go quickly  
17 to the argument, although I don't believe much of this is  
18 disputed. 1121(d) permits the extension of the sua superior  
19 for cause. That's a flexible standard for evaluation.

20 Now, the standard is so flexible that the burden on  
21 the debtor, that the initial extension for the very first  
22 extension is traditionally considered to be very low and it's  
23 routinely provided in the first time. We cite this information  
24 in our reply, these cases. It's the Myrick (phonetic) with  
25 Judge Lynn, you know, that traditionally that burden sort of

1 gets harder and harder as you ask for more and more extensions,  
2 and this is our first extension.

3 And here, Your Honor, the factors are traditionally  
4 include the ones we all know well, size and complexity.

5 Mr. Shandler testified this is a large case. It's  
6 very complex. Whether we've had sufficient time to discuss  
7 with creditors. Well, Your Honor, we had sufficient time to  
8 discuss with creditors. We had so much time to discuss with  
9 creditors, we came up with a plan, but now everybody wants to  
10 change it to a different plan. So we suggested we need  
11 sufficient time to talk about the alternatives.

12 Good faith progress, Your Honor, same thing. We did  
13 the first days. We got the adversary moving. It's hit a  
14 hiccup on discovery, which is something that happens in  
15 litigation. And we negotiated a complex plan with the debtors.  
16 Are paying bills as they become due? Mr. Shandler testified  
17 that we are paying bills as they come due.

18 We will acknowledge, Your Honor, professional fees  
19 are above budget for, I think, Your Honor, every set of estate  
20 professionals. So I think that that has been the case. And we  
21 won't -- we don't know the exact number with respect to that,  
22 but we do maybe -- Chad's -- Mr. Shandler's trying to correct  
23 me real quick, but we do recognize that that's an issue that's  
24 got to be dealt with in the context of any plan. But we would  
25 submit that terminating exclusivity is going to make that

1 problem worse rather than better.

2 Reasonable prospects for filing a viable plan. Well,  
3 we did file a plan, Your Honor. And not only that, everybody  
4 seems to have a new plan. So apparently there's a lot of plans  
5 out here and so we're willing to deal with that. The landlord  
6 said originally in their objection, which is a limited  
7 objection, they said the plan wasn't viable because our outcome  
8 was unachievable.

9 I don't think it's really an issue at the moment,  
10 Your Honor. But even if that were the case, even if you were  
11 to assume that plan wasn't viable because of some sort of  
12 outcome, there are alternative plans we can provide. This  
13 plan, we believe, is the best plan. This provides the most  
14 value for the bondholders and the most value for the creditors.

15 The final couple of factors, Your Honor, again, the  
16 debtor has made progress in negotiation with creditors. The  
17 plan is evidence of that. And even though, Your Honor, when we  
18 filed the plan itself, we also filed a motion to extend the  
19 exclusive periods as well as solicitation periods. It was  
20 never any intention that this is our one shot, if this plan  
21 doesn't work, we're going to convert to a 7 or something like  
22 that. We always knew there'd be a possibility of amending a  
23 plan once the litigation moved down a path.

24 And whether the debtor is seeking to pressure  
25 creditors. That's obviously not the case. We're not using

1 this plan as a sword. You know, we are -- we're not trying to  
2 drive this towards a conclusion. And finally, Your Honor,  
3 whether an unresolved contingency exists. And I think that  
4 one's even awkward to try and address in the context of this  
5 case. But there is a significant contingency that does exist.

6 And finally, Your Honor, and this wasn't really  
7 directly part of my outline, but we're addressing these sort of  
8 information concerns and information flows. What I think we  
9 made clear with Mr. Shandler's testimony and everybody in this  
10 room, including the bondholders know, the debtors have been  
11 evaluating alternative plans since well before we were hired.  
12 We came in as replacement counsel in March. They were  
13 evaluating these alternative plans for a long period of time.  
14 This is a hard case. There are a lot of potential outcomes.  
15 Many of them are potentially very hard on various creditor  
16 constituencies.

17 We worked with the bondholders. We picked what we  
18 all liked as the best outcome at the time. We continued to  
19 evaluate them post-filing. We met with the Committee. The  
20 Committee asked us, we want to see what Plan B looks like. And  
21 we're like, well, Plan B's not pretty. You may not want to see  
22 what Plan B looks like. Why don't you look at Plan A some  
23 more?

24 And he's absolutely right. We're like, look we want  
25 you to focus on Plan A and they want to focus on safety net,



1 what happens if the ground falls out. And we understand that's  
2 their perspective, but ultimately, Your Honor, at the end of  
3 the day, we provided them with the models. We actually  
4 provided them with working models. We provided them with all  
5 the information. We have all the information. We're the  
6 gatekeepers of it. And we have been giving that information  
7 out.

8 We've given them what they want to make their own  
9 analyses, and they're doing that themselves. And that -- you  
10 know, but they're using the information provided by the debtors  
11 and the debtors' professionals. The debtor hasn't just said --  
12 put their head in the sand and said, nobody talk to us unless  
13 it's Plan A. We've had conversations about Plan B. We shared  
14 the same information with the bond counsel, you know.

15 So whatever is driving the shift in decisions or  
16 whatever is driving everybody to want to seek alternatives,  
17 that's fine. That's every party's right in this particular  
18 case, but wanting to seek alternatives is not a basis to  
19 terminate exclusivity. And there's one case that we cite in  
20 particular, Your Honor, that's sort of relevant to this. I  
21 believe it was Geriatric -- it is slightly appropriate for this  
22 case perhaps, but let me find the cite, Your Honor. In re  
23 Geriatrics Nursing Home, a New Jersey case, it's 187 BR 128.

24 Interesting case, Your Honor. Everybody went to the  
25 bankruptcy court and they said, hey, we have all these really

1 interesting ideas. You know, we don't have any alternative  
2 plans, but we have these interesting ideas. We would really  
3 like to -- we'd really like you to terminate exclusivity so we  
4 can explore ideas, you know.

5 The bankruptcy court terminated exclusivity and it  
6 was appealed up to district court and district court said, wait  
7 a minute. Why are you just terminating exclusivity for people  
8 to explore ideas? It should only be done if there is an idea,  
9 if there is an actual viable plan.

10 So it's very similar to this exact situation. We're  
11 all talking in whispers about this is what our plan might look  
12 like and this is what our plan might look like. And that's  
13 fine, Your Honor, but again, I would respectfully request that  
14 the debtors get the opportunity to work with these parties and  
15 see if there's a plan that we can find consensus on. And if  
16 not, we'll come back here and you will terminate exclusivity  
17 and you will have a competing plan process and we'll have to  
18 figure out how we fund that.

19 So thank you, Your Honor. I reserve a couple of  
20 minutes for rebuttal. Thank you.

21 THE COURT: Of course. Thank you.

22 MR. McCARTIN: Thank you, Your Honor.

23 Steve McCartin for the Committee.

24 Committees are annoying. Our job is to backseat  
25 drive. And I'm particular annoying. So I apologize, but I

1 know the Court wants to hear from the residents and the  
2 unsecured creditors who hold \$159 million worth of claims.

3 And in addition to their claims, you know, this is  
4 the home of over 300 people, so I know the Court is interested  
5 in our -- you know, our opinions and our feelings about the  
6 status of the case and where we are today and I don't really  
7 know any better way to help inform the Court of a major  
8 constituency's issues today than just be honest and from the  
9 beginning.

10 And the Court heard that -- you know, I'm not the  
11 smartest lawyer in the room, much more, you know, in the world,  
12 but much more in the room. But it was pretty clear to us, we  
13 believe, that the timeline never worked on Plan A, that it was  
14 absolutely, as Mr. Johnson said, we knew no one could  
15 reasonably think that you could get the landlord litigation  
16 tried to finality to be the basis of a plan that had to be  
17 confirmed by December 31st.

18 But when we approached the debtor about those  
19 concerns and the request to develop a Plan B, we didn't feel  
20 like we were being taken seriously. We felt like, as a \$159  
21 million constituency, that we were being patted on the head and  
22 told, just focus on Plan A. Plan B is difficult. Plan B is  
23 not pretty. That wasn't okay with us.

24 And we, therefore, you know, have been trying to get  
25 information along the lines to get a Plan B dialogue going with

1 interested parties. We can dispute what was given to whom  
2 when, but most importantly, your Committee, your fiduciary does  
3 not feel like they've been given access timely to information  
4 we need to do our job.

5 We therefore had decided the status quo wasn't  
6 working. When we filed our objection, the debtor had asked for  
7 180 day extension of exclusivity. And we were still, again,  
8 back then when we filed the objection, the debtor wasn't  
9 talking to us in earnest about a Plan B. And we were concerned  
10 about and we thought the best thing to do to change the status  
11 quo was to object.

12 Well, then the bondholders popped up and said, now  
13 that the debtor has, you know, admitted it can't stay on the  
14 timeline, it admitted it can't try this case in December, and  
15 the debtor wants to extend the trial to February. We know that  
16 there's not finality in February either. I mean, proposed  
17 findings of fact and conclusions of law have to go upstairs.  
18 That takes a month or two, we assume. Parties can appeal.  
19 Confirmation of this plan looked speculative as Plan A.

20 So when the bondholders called us to engage in a  
21 discuss about Plan B, we were encouraged. We were cautiously  
22 encouraged. It's going to be difficult. But that then kind of  
23 opened the log jam, if you will, because I think then the  
24 debtor/Lifespace didn't want to be married to Plan A when the  
25 bondholders were ready to talk about Plan B, and, in fact,

1 weren't going to fund past December 31st. So debtor and  
2 Lifespace have called us and said, we too want to talk about  
3 alternative Plan B and --

4 THE COURT: Could you please mute --

5 MR. McCARTIN: Sure.

6 THE COURT: -- 254? Thank you.

7 MR. McCARTIN: So and I did -- I misspoke on  
8 timeline. I'm trying to step the Court through the timeline  
9 just to keep accurate.

10 When we filed our objection to exclusivity being  
11 extended and the bondholders had decided and filed their  
12 objection and notified the world that -- for the first time,  
13 the public, that they weren't -- that they had refused to  
14 extend the maturity or extend an extra amount of a loan, we  
15 were encouraged when the bondholders called us and said, let's  
16 talk about a bondholder Plan B.

17 We were encouraged by that and we were coming in here  
18 today to object to any extension of exclusivity, just as we  
19 objected to. However, then Lifespace called the Committee and  
20 said, we too would like to talk to you about an alternative  
21 Plan B, and we have some ideas. And we started those initial  
22 discussions to get some general idea of what they were  
23 thinking.

24 But the Lifespace said to us, we want to pursue this.  
25 We hear you loud and clear that you're frustrated with the

1 information flow, that you have no confidence in Plan A. So  
2 we, in fact, started -- we got our pencils out and started  
3 working on a Plan B a couple of weeks ago and we're ready to  
4 give you a general idea of what we're thinking.

5           However, they said to us, we don't think it would be  
6 productive for anyone. If exclusivity were to be terminated,  
7 if you were to prevail at the hearing on Thursday and  
8 exclusivity would be terminated, the Lifespace said to us, we  
9 really don't want the noteholder Plan B to be out in front of  
10 us. We don't think that's productive. We should be given time  
11 to catch up, to give the Committee options, which of course,  
12 the Committee always likes.

13           So Lifespace said, we would like for you to change  
14 your position at the hearing and we would like for you to  
15 support the extension of exclusivity, but for only 30 days.  
16 And that 30 days, while exclusivity is extended for 30 days,  
17 that gives us the Lifespace -- it gives us time to catch up  
18 and, you know, put more concrete or more certainty to the  
19 Lifespace Plan B and what they perceived was to catch up with  
20 the bondholders who they thought might be a little ahead of  
21 them in their thinking.

22           We, naively, without thinking three chess moves  
23 ahead, I will admit, said, that sounds like a good idea to us.  
24 We really do like optionality. We do like competition. And we  
25 would like to see both parties talking to the Committee about

1 alternative Plan Bs.

2           When we approached the bondholders about that at 3:00  
3 yesterday afternoon -- I might apologize for -- we said to  
4 them, I know you're not going to like this. I know you would  
5 like to press your advantage, if there is one, of having  
6 exclusivity potentially terminated tomorrow, but we're changing  
7 our mind. We're going to support 30 days because we want  
8 Lifespace to catch up and we want optionality. These are going  
9 to be difficult plans.

10           I didn't anticipate this, but the bondholders brought  
11 up what we ended up thinking was a good point. They said,  
12 look, if you're going to support the extension of exclusivity  
13 for 30 days to give the Lifespace time to catch up, we get  
14 that, but we shouldn't -- if you're going to ask us to work  
15 hard with you and spend money and start drafting complex plan  
16 documents over the next 30 days to develop the bondholder plan,  
17 it's not fair for you to then potentially pivot to Lifespace  
18 and we've spent all that time and money and we can't even  
19 propose a competing plan.

20           Keeping in mind that if we were to pick the  
21 bondholders over the next 30 days and we want to go with the  
22 bondholder plan, Lifespace and the debtor can file a competing  
23 plan. But the request was, but Dan's concern was -- I'm sorry.  
24 The bondholder's concerns was that if you pick the bondholders  
25 -- or I'm sorry -- if you pick Lifespace, I can't file a

1 competing plan and I'm going to spend a lot of time and effort  
2 on a competing plan in the next 30 days.

3           We, the Committee, into last night at 7:00 wrenching  
4 our hands over this, decided that that was the only fair thing  
5 to propose today, that if we're going to ask both parties to  
6 roll up their sleeves and spend money and work ten hours a day  
7 with us to come up with an alternative Plan B, that we need to  
8 keep the playing field level.

9           And we thought, rightfully or wrongfully, that it's  
10 only fair to agree to the bondholder request, which is --  
11 getting to the punchline, I guess. The bondholders have asked  
12 us and we have agreed to support today, an extension of  
13 exclusivity for 30 days so the noteholders can -- or so  
14 Lifespace can catch up. However, that at the end of that 30  
15 days, exclusivity is terminated and we're open for competing  
16 plans. Anybody can file a plan despite who the Committee may  
17 or may not pick as their favored proponent.

18           Now, that's a little nuanced and that's kind of hard  
19 to think through the dynamics of it, but we believe that that  
20 provided and provides the fairest, levellest playing field to  
21 both parties that we couldn't be happier, and we certainly want  
22 to encourage to engage with the Committee over the next 30  
23 days.

24           So the difference is I think Jeremy -- I think the  
25 debtor is saying, we want to extend exclusivity 60 days, not



1 180, but we want the right to come back at the end of that 60  
2 days and ask for another extension. The bondholders say that's  
3 not fair. The bondholders say we should terminate exclusivity  
4 in the future today so that we know if we spend a lot of time  
5 working with you, if you don't pick us, we still get to file a  
6 competing plan because we're going to work hard on that.

7           That's a nuance that's a little difficult, but we  
8 ended up thinking that that was fair, that almost like we're --  
9 you know, we've got a pause zone where everybody works on a  
10 plan and negotiates, but then everybody is allowed to file  
11 plans at the same time on the same schedule and irrespective of  
12 who the Committee picks as the more preferred plan to the  
13 Committee members.

14           And that's assuming that you end up with two plans.  
15 That's very optimistic, of course, that we end up with two  
16 viable proposed competing plans. But I didn't think it was  
17 fair and the Committee doesn't think it's fair to say to the  
18 bondholders, please work with us over the next 30 days and  
19 spent a lot of time and money doing so, but if we pick the  
20 debtor/Lifespace, you don't get to file a competing plan. We  
21 would all come in here under that hypothetical and ask for  
22 exclusivity to be extended again so we didn't have that pesky,  
23 competing bondholder plan going out at the same time.

24           I don't know if I'm able to explain that correctly,  
25 so.

1 THE COURT: No. I appreciate the walk to how you got  
2 there and how the Committee balanced the varying requests.

3 I think I would have some questions of all parties,  
4 and because the Court certainly has concerns. I have concerns  
5 with the debtors' request because if the creditor body has lost  
6 -- well, I'll say it differently.

7 If the debtors have lost the support of the creditor  
8 body to file a plan, then the Court is concerned that a 60 day  
9 extension puts us in November-ish and we're -- we don't have  
10 the requisite amount of time to get a plan and disclosure  
11 statement confirmed before the DIP would otherwise expire. So  
12 I'm concerned with that timing.

13 I'm also concerned, as Mr. Johnson alluded to, to the  
14 expense and the amount of money it would cost this estate  
15 either to fund a competing plan process or, candidly, even to  
16 fund folks getting in various silos, you know, of plans. And  
17 so, to put a pin in exclusivity for 30 days while we know folks  
18 are working on alternative plans, I'm not sure that we're  
19 getting the benefit of what I think the case really needs,  
20 which is the folks to start working together to see if there is  
21 a plan that everyone can support.

22 But those are the -- and so, again, I'll have some  
23 questions of the parties, but I want to hear from UMB first  
24 because, you know, I grant Mr. Johnson. A lot of what the  
25 first plan was meant to do was to hit the milestones, right, to

1 hit the deadlines. And, you know, the Court had concerns with  
2 milestones and deadlines at the beginning, but I said then and  
3 I'll say today that I understand the place for them and why  
4 they were there to keep a case rolling.

5 So, let me hear from the bondholders and then after  
6 that, before everyone can come back for kind of a second round,  
7 I'll let -- we'll take a recess. If the parties want to talk,  
8 they can talk, or if not, we'll have that pause before  
9 rebuttals.

10 MR. McCARTIN: Thank you, Your Honor.

11 THE COURT: Thank you, Mr. McCartin.

12 Mr. Bleck.

13 MR. BLECK: Thank you, Your Honor.

14 So I was going to, first of all, back up and talk  
15 about what we're at -- what the debtor is seeking today, but  
16 I'll go back to that. But I want to keep in mind once again,  
17 the debtor is asking for an extension of exclusivity. No  
18 creditor is asking for termination. And I think that all the  
19 parties would recognize that the debtor has the burden, and  
20 it's an evidentiary burden as well.

21 But I want to start at the end when Mr. McCartin  
22 explained to the Court what happened over the last 24 hours.

23 THE COURT: I think he made me read those emails  
24 after all.

25 MR. BLECK: Yes. Exactly.

1 And it does always happen like this in a bankruptcy  
2 where there are deadlines pending and everybody focuses and  
3 everybody is running towards a deadline and understands that  
4 they have to meet a deadline.

5 So, of course, the day before the hearing we're  
6 discussing the issues regarding the pending motion. And it was  
7 well before then that we had noted that we weren't going to  
8 extend the DIP.

9 As I said before, we gave an option. We said we'd be  
10 willing to extend the DIP and fund the first quarter. We  
11 wanted to dig into the \$6 million that was needed, but we would  
12 do that to the extent that the debtors terminated exclusivity  
13 today.

14 And the feeling was you got your funding, because you  
15 need funding. You are going to -- you can prosecute your case.  
16 But at the same point and time, things are getting really tight  
17 and people are getting anxious and it's time to start looking  
18 at alternatives.

19 And it makes sense to have those alternatives before  
20 the Court. It's great if we can talk about alternatives and we  
21 can talk about term sheets, but until we can put something  
22 before the Court, nothing materializes. That's a simple fact.

23 So when Mr. McCartin came back to us and said, well,  
24 I think what we're going to do is extend exclusivity for 30  
25 days, we're going to support that request of the debtor because

1 Lifespace -- not the debtor, but Lifespace has decided to come  
2 to the table to discuss an alternative.

3 And I think you heard from the testimony of Mr.  
4 Shandler that Edgemere doesn't have the resources to confirm a  
5 plan here. They simply don't. And you also heard from Mr.  
6 Shandler that Lifespace -- and I don't think anybody would  
7 disagree -- is a separate and distinct entity. It's not a  
8 debtor in this bankruptcy. It doesn't have the benefit of  
9 exclusivity.

10 And so when Mr. McCartin was saying, well, we think  
11 we're going to give Lifespace the opportunity to catch up and  
12 we're going to allow the debtor to extend the exclusivity,  
13 we're saying, well, wait a minute now. Lifespace is a third  
14 party. If they want to propose a plan, they can, but the  
15 debtor still needs to allow exclusivity to terminate because  
16 how does Lifespace propose that plan?

17 So we're thinking, okay. If the only two parties  
18 that are looking to propose a plan are non-debtor third  
19 parties, it only makes sense to terminate exclusivity because  
20 those are the only potential parties that will submit a Plan B.

21 So then Mr. McCartin said, okay, I think I -- I  
22 understand that logic, but we need Lifespace. Lifespace is  
23 apparently behind us because we've been thinking about this for  
24 a while and we've been looking at different scenarios and  
25 running different models and working with different experts

1 relative to this because it's the responsible thing to do.

2 And Mr. McCartin said, well, Lifespace thinks they're  
3 behind because we know you guys have been looking at this and  
4 digging into it hard, so I feel like there should be an  
5 opportunity for Lifespace to catch up. So we said, all right.  
6 We'll agree to hold back. We'll agree that we'll extend --  
7 we'll allow the debtor to extend exclusivity for 30 days, but  
8 it's not really for the debtors' benefit. It's for this  
9 outside third party to put together this plan that they think  
10 they need the time to put together.

11 So we said, okay, we can agree to that because the  
12 Committee naturally wants a competitive landscape. Mr.  
13 Robichaux testified to the fact that competition only drives  
14 potentially better results for creditors. We understand that,  
15 so we're willing to play by those rules, but once again,  
16 understanding that any plan that's going to be proposed here on  
17 Plan B or the ones that are being discussed are from two non-  
18 debtor third parties.

19 So that's how we came to this grand resolution which  
20 we thought was fair and made sense because, to be quite frank,  
21 the debtor on its own can't move forward with a plan. It needs  
22 financing and support from some third party. And that's what  
23 both Lifespace is suggesting they could do and that's what  
24 we're suggesting we can do.

25 And, Your Honor, you've seen the commitment that's

1 been put on before. As Mr. Johnson has said, it's not a lockup  
2 agreement, but there was significant negotiations. There's  
3 significant new money being put in by the bondholders. And  
4 they're continuing to be willing to move forward with that  
5 significant commitment, but we don't know what Lifespace is  
6 willing to do. They're just at the beginning.

7           And the issue here, and I know that the -- I don't  
8 want to call it a knee jerk reaction because that's not fair,  
9 but I know that the initial thought is, okay, let's just give  
10 another 30 days. But 30 days is extremely a long time period  
11 for here.

12           We were concerned with not having exclusivity  
13 extended beyond today because we have a very short window to  
14 get a plan confirmed. And so 30 days, although it doesn't  
15 sound like a lot, it's an extreme amount of time that we're  
16 going to -- all the parties are going to be working hard to try  
17 and get something in place that makes sense, but the idea is  
18 that on the 27th -- October 26th is the last day we said -- so  
19 October 27th everybody that's been working hard towards that  
20 deadline, and people only work towards deadlines, that a plan  
21 will be filed or hopefully, for the Committee's sake, two  
22 plans.

23           And I understand the cost and expenses of competing  
24 plans. But unfortunately, that's the situation we're in here  
25 today relative to the fact that there are two different non-

1 debtor third parties looking to support this. And a  
2 significant amount of cash has to be invested into these  
3 facilities going forward. There's just no doubt about it.

4           So that was my ending remarks here. Going back to  
5 the beginning, and Your Honor touched upon this as well, but  
6 once again I'm going to highlight the fact that the debtor has  
7 the burden of proof here. And it's not just the burden of  
8 proof, but they have to make an affirmative showing through  
9 evidence, supported by evidence, that an extension is  
10 warranted.

11           And as Mr. Johnson said, there are various factors  
12 involved. And Mr. Shandler went through some of them, but I  
13 think a couple of the key ones are, and Your Honor just touched  
14 upon this and I was looking at my outline and I said, you stole  
15 my opening.

16           That's why I went from the end to the beginning, was  
17 the fact whether the debtor has made progress in negotiations  
18 with its creditors. And nothing could show you more that it  
19 actually hasn't and we've taken a step backwards, because each  
20 of the parties, each of the major creditor constituencies in  
21 this case, is objecting to the extension. I don't know what  
22 more evidence there could be that actually the negotiations are  
23 going backwards as opposed to forward.

24           And, as I said, in addition to that, they have not  
25 shown a reasonable ability to move forward with their plan.



1 Their plan is the plan that's on the table. If you look at  
2 their motion to extend exclusivity, it only talks about the  
3 plan, Plan A. And what I think everybody recognized was that  
4 the debtors couldn't confirm that plan within the time frame  
5 that everybody had talked about initially.

6           There was a reason that the DIP was set at the end of  
7 December because -- and there was a reason for a request to  
8 Your Honor for a hearing or trial -- excuse me -- in December.  
9 And although Mr. Johnson may say, well, it was never possible  
10 to get that case tried, we did it. We relied on that. That's  
11 the DIP that we sized. That was the DIP that we established.  
12 And we were very clear about that fact when we were negotiating  
13 the DIP.

14           And then the debtor made a decision on its own. Yes,  
15 we had one conversation about an extension of the scheduling  
16 order and we said, we don't understand. And they said, well,  
17 we'll provide you some further information about that. And  
18 they followed up with us the following week and then we had a  
19 meeting with the bondholders. And I remember it was on a  
20 Thursday trying to explain this to them. And then Friday they  
21 said, we have to file our motion to extend.

22           So the deal that we agreed to was the fact that this  
23 was going to be tried in December. We sized the DIP and the  
24 maturity based upon that. And the debtors made the decision to  
25 extend not having a DIP beyond December, and that was their

1 choice, but there are ramifications for that choice.

2 And now the debtors acknowledge that they can't even  
3 confirm the plan in February. We're going to get to February  
4 with the plan. That's when the trial is going to be, because  
5 they were originally asking for an extension of exclusivity  
6 until February. We have a trial that they're trying to set in  
7 February. And once again, we're not going to be in a position  
8 to confirm that plan. So there is no viable plan that the  
9 debtor has put on the table.

10 And although Mr. Shandler testified that they were  
11 looking at alternatives, I think we heard alternatives in  
12 February of 2022, sometime in March of 2022. Yeah. They  
13 looked at a couple of different other models, but nothing has  
14 materialized from that.

15 So that's the situation we find ourselves in and  
16 that's why we objected to the extension because we realize that  
17 to be able to basically move these cases forward, have the  
18 operations stabilized, get the operating entity out of  
19 bankruptcy on as quick of a path as possible is the best  
20 interest not only for my clients, because it is.

21 I'm looking out for the economic interest. There's  
22 no doubt about that. But it's also in the best interest of the  
23 residents and the community because the longer this uncertainty  
24 remains, the longer a cloud remains on this community. And  
25 that takes even more time and effort to resuscitate.

1           So, Your Honor, we would ask and, like I said, Your  
2 Honor, this was not our idea. We would have preferred to have  
3 exclusivity end today. But we're willing to abide by the  
4 Committee's request to create that competitive landscape that  
5 they're looking for, but give us the ability to file our plan  
6 on October 27th. That's what we're looking for.

7           THE COURT: Thank you.

8           MR. BLECK: Thank you, Your Honor.

9           THE COURT: Thank you, Mr. Bleck.

10           I do want to understand, based upon what the  
11 Committees and the bondholders have proposed, are you proposing  
12 that exclusivity essentially be lifted for certain parties or  
13 are you proposing that exclusivity terminate, I think you said  
14 on October 27th --

15           MR. BLECK: Right.

16           THE COURT: -- as to all parties.

17           MR. BLECK: Your Honor, Your Honor, I'm going to be  
18 selfish. I would prefer to terminate just for the Committee  
19 and us, but I mean, or Lifespace because I know Lifespace wants  
20 to file a plan as well. So I don't have a problem with that.  
21 I would prefer that.

22           But if the Court -- Your Honor believes that it  
23 should be opened up to other parties, I mean, we're not going  
24 to squabble over that. I don't think any other parties are  
25 coming in here to be able to get up to speed and do what they

1 need to do over the next two, three, plus weeks to get this  
2 case moving. I don't think it really matters practically, but  
3 at the same point and time, if the Court would prefer it opened  
4 up to everybody, we wouldn't have an objection to that.

5 THE COURT: Okay. Thank you very much, Mr. Bleck.

6 MR. BLECK: Thank you.

7 THE COURT: Alrighty. Again, I want to give -- I  
8 mean, let me ask this.

9 Do the parties wish to have a brief recess before  
10 final rebuttal?

11 MR. JOHNSON: Nope, Your Honor. I don't think  
12 anybody is -- I think we're ready to go, although I don't know  
13 -- put you on the spot now.

14 THE COURT: Mr. Walker.

15 MR. WALKER: Thank you, Your Honor.

16 For the record, Eric Walker on behalf of Lifespace.

17 I thought it might be helpful for the Court to hear  
18 from Lifespace since we've been talking a lot about recent  
19 developments and how Lifespace might figure into that.

20 So by way of background, Lifespace is, as you know,  
21 is the sponsor and parent of the two debtors here. And  
22 Lifespace itself is a non-profit corporation that owns and  
23 operates 17 senior living communities throughout the United  
24 States, including the Edgemere.

25 As the Court has heard, we spent months both prior to

1 the bankruptcy filing and then after the cases were filing,  
2 negotiating a Chapter 11 plan with the debtors, with the bond  
3 trustee, and with the DIP lender.

4 And that culminated in the Chapter 11 plan that was  
5 filed earlier this year on August 3rd. And that plan is based  
6 both on the landlord litigation, but also a significant new  
7 investment of money by both the bondholders and Lifespace as  
8 the parent.

9 Now, Lifespace's contribution was in the tens of  
10 millions of dollars, and that was as a contribution. It wasn't  
11 a loan that was going to get repaid with any interest. That  
12 was just a contribution by Lifespace as the sponsor.

13 And all the parties were working together  
14 collaboratively towards confirmation of that plan, but that all  
15 changed just very recently on Friday when the bondholders filed  
16 their objection to the exclusivity motion which caught us by  
17 surprise, I think caught most of the parties by surprise about  
18 this very last minute change in position by the DIP lender and  
19 the bond trustee, who we thought we had an agreement with on a  
20 very complicated but consensual Chapter 11 plan that we were  
21 moving forward with.

22 So once we saw that objection on Friday, we started  
23 working with the debtors and working with the Committee over  
24 the weekend, over the Jewish holiday to start talking about,  
25 well, now that it seems like one of the -- you know, the DIP

1 lender and one of the supporters of the plan has now pivoted  
2 away from that plan, we should start talking about  
3 alternatives.

4           And we had some productive conversations and we  
5 talked with the Committee and with the debtors both about  
6 negotiating an alternative plan that would be in the best  
7 interest of Edgemere and its residents, but also Lifespace has  
8 also starting talking to the debtors about providing some  
9 additional financing, whether it's additional financing or even  
10 replacement DIP financing.

11           But again, these conversations just started when we  
12 saw the objection of the bondholders which -- and the DIP  
13 lender, which we were unaware of their change in position with  
14 respect to the plan that was just filed on Friday of last week.

15           So I want to be clear about this. Lifespace remains  
16 committed to supporting Edgemere. And I want to make that  
17 clear on the record for all the parties present, and especially  
18 the folks who have dialed in, including many residents who we  
19 understand attend these hearings.

20           Lifespace remains committed to supporting Edgemere.  
21 And we think the best approach is effectively what the debtors  
22 have proposed today, which is give the parties some additional  
23 time.

24           We don't need exclusivity past committed DIP funding  
25 of December 31st or into next year, but the parties and the

1 debtor should have some time to evaluate this very recent  
2 change of events, assess kind of the current position of the  
3 parties, and have some time to negotiate a potential  
4 alternative that the debtor might be able to support and file  
5 in the form of an amended plan or a new plan that would be in  
6 the best interest of the estate.

7           And so we think by providing either 30 days or 60  
8 days is a reasonable approach in this situation. It gives the  
9 debtors and all of the other parties who weren't privy to the  
10 bond trustee and the DIP lender's recent change in position an  
11 ability to evaluate the situation, propose alternatives.

12           Hopefully we can convince the Committee that those  
13 alternatives are better than Plan A or in the best interest of  
14 creditors and the residents, and then move forward with that  
15 before we decide today that exclusivity should terminate either  
16 today or in 30 days, which then opens it up for anybody to file  
17 a competing plan, which further would drive up administrative  
18 costs and create additional stress in an already very  
19 complicated situation.

20           So from Lifespace's perspective, we are working  
21 around the clock to develop alternative plans, both for funding  
22 and for a Chapter 11 exit here. We would like the ability to  
23 have some time to do that and engage in those discussions with  
24 the Committee, with the bond trustee, and the DIP lender, and  
25 with the debtors.

1 And we think a short extension of exclusivity,  
2 especially considering this is their first request, is  
3 appropriate in this situation and doesn't prevent folks from  
4 coming back in 30 days and saying, okay, we have kind of  
5 crystallized these ideas in terms of an actual plan that we are  
6 prepared to file.

7 No party has said that they're there yet, so it seems  
8 premature to me to say we need to terminate exclusivity today  
9 or in 30 days. The debtor should have a short extension, see  
10 how much progress we make, and then we can come back in 30 days  
11 or in 60 days and decide that exclusivity should be terminated  
12 at that point. And that doesn't prejudice any party as opposed  
13 to trying to prejudge that today before these ideas have had an  
14 opportunity to percolate.

15 THE COURT: Alrighty. So obviously, we know where 30  
16 days puts us. Thirty days would put us the last week of  
17 October, the last full week of October. I mean, at that  
18 juncture, if I were to leave it open, at that juncture, a plan  
19 has to be filed immediately.

20 I mean, that's what the Court is struggling with is  
21 to get a plan confirmed by the end of the year, disclosure  
22 statement, assuming we don't modify the various rules, you need  
23 about 60 days. And we are running out of real estate. That's  
24 a bad pun, ooh. Because the last -- I mean, again, we are  
25 essentially out of time.



1 MR. WALKER: As it stands today, but again, from  
2 Lifespace's perspective, we are considering very seriously and  
3 negotiating both --

4 THE COURT: A takeout DIP?

5 MR. WALKER: -- a plan and takeout DIP. And I would  
6 expect -- you know, to Mr. Bleck's point. It is true. Any  
7 plan here is going to require a significant investment of new  
8 money, regardless of when the DIP expires, right. So that new  
9 money will include exit financing, working capital, CapEx,  
10 right. It will also include, as part of that exit financing,  
11 whatever the administrative costs are of confirming that plan.

12 And so I assume that any plan proponent is going to  
13 have to factor that in. And giving parties 30 days in light of  
14 very recent developments that have changed things materially, I  
15 think is a reasonable approach.

16 THE COURT: So I guess my question for you, Mr.  
17 Walker, would be what is the primary difference between a 30  
18 day extension or 30 days and what I will loosely call a drop  
19 dead? That essentially exclusivity terminates on -- what's the  
20 primary difference there?

21 MR. WALKER: Sure. From Lifespace's perspective?

22 THE COURT: Yes.

23 MR. WALKER: We don't know what we don't know, right.  
24 We don't know what's going to change over the next 30 days, so  
25 by prejudging that and automatically having it terminate in 30

1 days just provides the opportunity for a variety of variables  
2 that could impact that case that I think would be premature for  
3 us to have to decide now.

4 We could decide it at the next hearing on October  
5 26th and it still gives parties an opportunity to file their  
6 plan the next day if they come in and say, we have a plan.  
7 We're ready to go. This is what happened.

8 There's really no difference other than it -- you  
9 don't have to prejudge that now and create the risk of  
10 unforeseen circumstances impacting that where we come back in  
11 three weeks and say, boy, we really wish we could have decided  
12 that differently because for one reason or another, now we've  
13 got a third party who's come in with a plan or now we've got  
14 competing plans. And we coalesced around one that we thought  
15 would be much easier to confirm, but now we've got a mess on  
16 our hands.

17 THE COURT: Okay. Thank you, Mr. Walker.

18 MR. WALKER: Thank you, Your Honor.

19 THE COURT: Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor.

21 So very briefly, Your Honor, again, understand the  
22 concerns regarding timing. I would say even if you were to  
23 terminate exclusivity today, you know, competing plans may be  
24 on file in 30 days, might be on file in two weeks. We might  
25 have multiple. You know, we might have two. We might have

1 three.

2 I'm not sure how many would go. We'd have to work  
3 out scheduling for that. It's not getting done on a fast  
4 track, right.

5 And so and maybe after the end of this 30 days  
6 there's only one viable plan. Maybe only Lifespace and the  
7 debtors can put together a plan that the Committee likes.  
8 Maybe only the bondholders can put together a plan. It's  
9 possible that any of these things can change during the next 30  
10 days. So I think it's worth that opportunity to see where we  
11 are.

12 But I think, importantly, Your Honor, and this sort  
13 of wasn't addressed by Mr. Bleck. He kept talking about the  
14 debtors' plan, the debtors' plan, the debtors' plan. It's not  
15 the debtors' plan, Your Honor. It's the debtors drafted the  
16 plan, that have filed the plan, but the plan is a result of the  
17 Lifespace and bondholders and debtors' negotiations. And the  
18 bondholders have chose to pivot away from it. And that is  
19 their right, Your Honor.

20 Again, we aren't trying to force anybody here, but  
21 our hands were tied for several months during this case, so we  
22 couldn't consider these various alternatives.

23 Now it appears our hands are less tied and we can  
24 consider other possible alternatives including working with  
25 Lifespace or working with the bondholders as part of a plan.

1 And you're hearing a lot of things about competing plans, but  
2 you have no idea what these competing plans involve other than  
3 what Mr. Bleck testified to that involved the assumption of a  
4 lease, which I think all the plans would have to involve an  
5 assumption of the lease, you know, if they can't obtain  
6 equitable relief with respect to the lease.

7           So there's a lot of open questions there that need to  
8 get answered. And just simply stating, our plan is going to be  
9 in the best interest of the creditors because it gets us out  
10 faster. Well, if that plan -- you know, that plan could have  
11 significant ramifications for the residents, you know, for the  
12 bondholders. I mean, there are certain consequences to that.  
13 And that's not being fully elucidated here because you don't  
14 have a term sheet in front of you.

15           THE COURT: Right.

16           MR. JOHNSON: And you don't have anything there.  
17 They're just saying, we have all these ideas and we'd love to  
18 bring them to fruition, so please terminate exclusivity so we  
19 can do that. That's a --

20           THE COURT: Well, Mr. Johnson, I'll interrupt you a  
21 bit.

22           MR. JOHNSON: Yeah. Go ahead.

23           THE COURT: I don't disagree with you. I have a  
24 variety of -- I think everyone has like a plan thought bubble.  
25 Right now I don't have a term sheet. I don't have anything

1 hard in front of me.

2 I think all we know is that there is a case necessity  
3 with just the way the calendar is flipping to pivot away from a  
4 litigation outcome plan because the outcome of this litigation  
5 just won't occur prior to year end most likely, absent a  
6 settlement, to be honest.

7 But I need to challenge you a bit. I grant you that  
8 UMB was supportive of your plan as initially filed. And I  
9 agree that the debtors probably filed that plan under the  
10 impetus of the milestones. You don't want to breach your DIP.  
11 However, what stopped the debtor from seeking out other  
12 alternatives?

13 And I don't think it came as a surprise to you that  
14 from the landlord's perspective, you were always going to have  
15 the -- you were always going to have this fight, that an out --  
16 a litigation outcome based plan was going to be problematic.

17 MR. JOHNSON: Uh-huh.

18 THE COURT: So what stopped the debtor from  
19 approaching Lifespace or just seeking out Plan B before today?

20 MR. JOHNSON: Well, Your Honor, I would say this,  
21 that Plan B was evaluated before today. It's been evaluated  
22 before we ever filed bankruptcy. It's been out there forever.

23 And so when the Committee says, well, we really want  
24 to -- we're going to come up with a Plan B, they came to us and  
25 said, give us your Plan B model. And the bondholders had this

1 model too pre-filing. The bondholders and the debtors in  
2 Lifespace looked at Plan B and came up with Plan A because Plan  
3 A is far superior and provides a much better return to  
4 creditors than Plan B.

5 It obviously has contingencies and risk associated.  
6 We understand that. And I think it's fair to say, Your Honor,  
7 again, it's a litigation outcome plan. You can't pick every  
8 possible outcome, so you can't game plan for every -- you can't  
9 put 75 toggles in for how -- what a plan might look like.

10 So we sort of said, this is what -- this is a way  
11 that we could restructure this community and preserve all this  
12 value for the bondholders and the residents. And that's where  
13 -- and that same plan was being supported by the bondholders at  
14 the time. So that's always been the case.

15 And when the Committee wanted to explore this, we  
16 gave them the information. We gave them another model. We  
17 gave them access to the actual documents. We changed the  
18 model. We operated assumptions. We talked about our concerns.  
19 We know these other plans exist, Your Honor, that are not  
20 necessarily outcome determinative.

21 But as you might imagine, there's another shoe to  
22 drop there, right? If you can't get a certain outcome you want  
23 from your landlord, and again, you've heard people say things  
24 like, they need \$150 million judgment for it to work or they  
25 need something like that.

1 THE COURT: Yeah.

2 MR. JOHNSON: I think the understanding here, Your  
3 Honor, is that if we get whatever we get from the litigation,  
4 if anything, but whatever we get from the litigation, that's  
5 going to force a modification of the terms of the plan. And we  
6 had milestones we had to meet. We didn't want to jeopardize  
7 our DIP financing. We were effectively -- we were effectively  
8 marching in step.

9 And again, Lifespace was supportive of it as well.  
10 This wasn't a situation where we hated the plan, but we had to  
11 go forward with it. This is the best plan for creditors, Your  
12 Honor, the Plan A that's on.

13 That being said, it's a tough target to meet and we  
14 ran into a discovery hitch, which slowed things down. And so  
15 when it came time for that decision to be made, the question  
16 for the debtors were, well, the bondholders are telling us they  
17 don't want to fund it past December.

18 And so they are telling us either do this trial in  
19 December unless you think you -- you know, unless we, in the  
20 exercise of our fiduciary duties as estate fiduciaries, believe  
21 that that would be doing it to service to the estate of the --  
22 to the estate and the estate's creditors.

23 So the decision to extend, Your Honor, was a  
24 necessary one. It wasn't because we didn't want to work over  
25 the holidays. It was because we didn't have access to certain

1 buckets of documents that we think are really important to our  
2 case and our damages.

3           So the delay is sort of -- but, of course, Your  
4 Honor, that could have been assumed from the beginning, and so  
5 maybe we spent a lot of time and money with the bondholders and  
6 Lifespace that perhaps, you know, at this point is looking like  
7 it may have not been worth the time and money to go through  
8 that plan. But we had to do it to meet our milestones and  
9 everybody was on board.

10           Now people are getting off board all over the place,  
11 and so we understand that that's the case. But again,  
12 exclusivity, you're not -- you don't run competitive plan  
13 processes or you typically do not see competitive plan  
14 processes because it's very expensive and complicated.

15           You do have a competitive stalking horse for a plan  
16 or you can run a competitive process when you're looking for  
17 investors to participate in part of a plan. And that's really  
18 what we're talking about is we're talking about how to form a  
19 plan.

20           And the Committee is sitting here saying, we'll go  
21 with whoever we like best at the end of the day. Bring us your  
22 best offer, everybody. And the bondholders are trying to get  
23 them to come here and Lifespace has been leading the charge on  
24 that side, but presumably is going to be involving the debtors.

25           And ultimately, Your Honor, the Committee is going to



1 decide which one they want to support. The debtors will decide  
2 which plan they want to support. And I think we'll be back in  
3 front of you.

4 And, again, I asked for 60 days. You know, Mr. Bleck  
5 sort of mentioned some of our conversations that we were having  
6 about this. I offered 30 days and 30 days, everybody get your  
7 ducks in a row and let's come back and you can show your ducks  
8 off and we can see, you know, who's got the best looking duck,  
9 and then do it at that point. I didn't say that. That would  
10 be weird in an email, but in any event, Your Honor, that's the  
11 concept.

12 I mean, people want to talk about plans. It's all  
13 pie in the sky at the moment. That's not a basis, in our view,  
14 to refuse to extend exclusivity. Exclusivity should be -- we  
15 believe it's appropriate to be extended. We believe that the  
16 various milestones have been met and I appreciate Mr. Bleck  
17 saying that he doesn't think any progress has been made with  
18 creditors, but I think he would have said something very  
19 different on August 15th, probably on September 10th, Your  
20 Honor.

21 But we were making progress along the way and now  
22 people have decided they want to look at a different -- want to  
23 look at this differently. And we are supportive of that, Your  
24 Honor. We want to build consensus however is possible. So  
25 give us an opportunity to do that.

1           We recognize that we have to deal with the funding  
2 situation. And, you know, it's possible that we're all going  
3 to end up getting behind a bondholder plan. Presumably they're  
4 going to provide some additional funding to get us through that  
5 process and then figure out what we do with litigation later.  
6 If we go with the Lifespace plan, you heard from Mr. Walker  
7 that, you know, that would be their cross to bear.

8           And I understand that's just something we have to --  
9 we need to resolve sooner rather than later. We've got a few -  
10 - we have three months. I recognize we can't wait three months  
11 to solve it, but we do need some time to try and solve that to  
12 make sure that we can continue operating and care of the  
13 residents the way we have been, so.

14           So we'd appreciate a 30-day extension for now and  
15 just kick the relief to the next omnibus and see where we  
16 stand. Thank you.

17           THE COURT: Thank you very much, Mr. Johnson.  
18           Mr. Bleck.

19           MR. BLECK: Thank you, Your Honor.

20           And, Your Honor, I appreciate everything that  
21 everybody is saying, but once again, it comes down to the simple  
22 fact the debtor itself can't propose a plan. It doesn't have  
23 the wherewithal to do it. And what's potentially being  
24 suggested is, well, we're going to shield Lifespace. We're  
25 going to use our exclusivity.

1 THE COURT: Mr. Bleck, is that fair, though? I mean,  
2 essentially, wouldn't the argument be that Lifespace would be  
3 the debtors' plan sponsor?

4 MR. BLECK: Right.

5 And my point though is, Your Honor, we're dealing  
6 with a not for profit entity. We don't have equity. The  
7 simple fact is, is that we should be able to put both plans on  
8 the table because if we wait 30 days, then we've lost another  
9 30 days. And the simple fact is it's not easy to turn a plan  
10 in a one week period. I mean, there are a lot of things that  
11 need to occur here.

12 You've got to prepare your plan and your disclosure  
13 statements. You've got to prepare your financials. You're  
14 going to have to prepare new bond documents. I mean, it's not  
15 a simple process and it's a timely and consuming process too  
16 and expensive process.

17 But we're willing to take that on and we're willing  
18 to bear those costs because we don't want to be here on October  
19 26th. And the debtor says, well, you know what, we couldn't  
20 get there yet. Maybe we'll have a little more time or, you  
21 know what, we're going to go with the Lifespace plan, but then  
22 we're going to have like -- if we're not happy we're going to  
23 have a huge contested confirmation battle and all the costs and  
24 expenses of that, as well.

25 So what we're trying to do is have a level playing

1 field. People can decide which plan they would like. The  
2 Committee would like this option. It gives them a competitive  
3 ability.

4 And I'll be very frank. I know what they're going to  
5 do. They're going to go to Lifespace. They're going to go to  
6 us. They're going to say, can you approve this? Can you  
7 approve that? Yeah. That's what they're going to do. And we  
8 get that, but we're willing to play by those rules, but we need  
9 to start the process now because, as Your Honor pointed out,  
10 we're already at the end of September.

11 We've got three months to confirm this plan. I don't  
12 think we can, but, you know, everybody is going to run as hard  
13 as possible, but at the same point and time, we have to start  
14 that process now. Thank you.

15 THE COURT: Thank you, Mr. Bleck.

16 Anybody else?

17 (No audible response)

18 THE COURT: Alrighty. It is -- it is 2:50 now. The  
19 Court could give you a bench ruling today, but I will probably  
20 require, I'd say maybe 45 minutes, 30 to 45 minutes.

21 So what we can do is if we want to recess for that  
22 amount of time and -- or if the parties want to come back in an  
23 hour, if you want to go and grab coffee or something, you can,  
24 or we can set up a time for a bench ruling on Monday or  
25 something.

1 What would the parties prefer?

2 MR. BLECK: If we could do it now, Your Honor.

3 THE COURT: Today?

4 MR. BLECK: Yeah. Today.

5 THE COURT: Okay. Alrighty. Well, the -- is it  
6 2:50. The Court will stand in recess until 3:45.

7 THE CLERK: All rise.

8 MR. BLECK: Thank you, Your Honor.

9 (Recess at 2:49 p.m./Reconvened at 3:57 p.m.)

10 THE COURT: Please be seated.

11 All right. Ladies and gentlemen, we're back on the  
12 record in Case Number 22-30659. Thank you very much for your  
13 patience.

14 The Court is prepared to rule on exclusivity unless  
15 there's been any other discussions. All righty.

16 Okay. Before the Court is the motion of the debtors  
17 for entry of an order extending the exclusivity period for the  
18 filing of a Chapter 11 plan which was filed on August 11, 2022,  
19 wherein the debtors originally requested a 180-day extension of  
20 exclusivity period to February 8, 2023.

21 As the hearing progressed, the debtors modified this  
22 request to a 30-day extension. Lifespace, the debtors' manager  
23 and potential plan sponsor, supported the debtors' request.  
24 That request is juxtaposed to the compromise request of the  
25 Committee and UMB, the debtors' bondholder Trustee and DIP

1 lender, for a 30-day extension with a predetermined end to  
2 exclusivity on October 27, 2022, at least as with respect to  
3 UMB and the debtors/Lifespace.

4           The following will constitute the Court's findings of  
5 fact and conclusions of law on the exclusivity motion.

6           The Court would note that it has jurisdiction over  
7 this matter pursuant to 28 U.S.C. Sections 157 and 1334 and  
8 that the matter is of core proceeding within the meaning of  
9 28 U.S.C. 157(b) (2) .

10           The Bankruptcy Code provides debtors a limited period  
11 in which the debtor alone may propose a plan of reorganization.  
12 During the 120-day exclusivity period, only the debtor in  
13 possession may file a Chapter 11 plan. If the debtor in  
14 possession files a plan within the 120 days after the petition  
15 date, the debtor in possession has an additional 60 days, up to  
16 180 days after the petition date, to obtain acceptance before  
17 any other party in interest may file a competing plan.

18           If the debtor in possession files a plan but fails to  
19 obtain creditor acceptance within 180 days following the  
20 petition date, the exclusivity period automatically terminates.  
21 Any creditor or party in interest may then file a plan of  
22 reorganization. The debtor in possession bears the burden of  
23 establishing cause to extend the exclusivity period.

24           Section 1112(d) does not define cause for purpose of  
25 extending exclusivity. Rather, it's a fact specific inquiry

1 and the Court must weigh the relevant factors and in its  
2 discretion determine whether exclusivity should be terminated  
3 or extended. The Court often considers exclusivity extensions  
4 based upon the relevant factors that were first articulated in  
5 In re Express One International, Inc., 194 B.R. 98.

6 I won't go through the entire list of factors, but  
7 the Court would note that in reaching its decision, it was a  
8 very, very difficult decision. But in the Court's discretion  
9 after review of the relevant factors and the consideration of  
10 the evidence, the Court finds that the debtors have failed to  
11 establish cause to extend solicitation exclusivity beyond 30  
12 days.

13 This decision is more about the calendar than it is  
14 with the Court's lack of faith in the debtors. The reality is  
15 that all major stakeholders in this case, the Trustee, the  
16 Committee, and the landlord, opposed the relief requested by  
17 the debtors in the motion to extend. The stark truth is that  
18 whatever collaboration or negotiation that was happening behind  
19 the scenes stalled before this hearing and is in its infancy as  
20 it pertains to the debtors pursuing what was called a Plan B.

21 The Court will not discuss all of the factors as they  
22 pertain to exclusivity. However, the following factors  
23 particularly weigh against granting the motion to extend.

24 First, the existence of good faith progress towards  
25 reorganization. The Court interprets this factor not as to

1 whether the plan or the instant motion were proposed in good  
2 faith -- that's unquestionable -- but whether the debtor has  
3 made progress towards reorganization. The debtors came into  
4 these cases with a singular adversary, the landlord. However,  
5 that silo has now broken down and all parties favor the  
6 optionality of alternative exit strategies from these cases.

7           The debtors have not shown any actual progress  
8 towards reorganization save and accept filing a plan to meet  
9 its DIP deadline, a plan wholly contingent on a substantial win  
10 in litigation, which will not conclude until well after the DIP  
11 expires. Although the filing of the plan and disclosure  
12 statement was a positive step, the debtors readily admitted  
13 they were not prepared to solicit that plan.

14           Now, with the opposition by its DIP lender and the  
15 recognition that the plan contingency will not likely resolve  
16 for many months after the maturity of the DIP, the debtors'  
17 progress towards reorganization has seemingly failed or at  
18 least stalled significantly. In a case such as this where  
19 margins grow increasingly tight, the restructuring must move  
20 forward with haste.

21           The next factor is the fact that the debtor is paying  
22 its bills as they come due. There are questions whether the  
23 debtors are on the brink of administrative insolvency.  
24 Although no party has proven that negative implication, the  
25 fact remains that the debtors came into these cases without the



1 intention to pay their landlord as their lease payments came  
2 due. In fact, the debtors have only made payments thereafter  
3 upon order of this Court and even then, the money is merely  
4 placed into escrow.

5 Substantial bills and fees are coming due. But in  
6 addition, the debtors do not appear to be adding residents  
7 while in bankruptcy. And in sum, the evidence showed that the  
8 debtors need \$6 million to push forward through Q1 '23.

9 The next factor is whether the debtors demonstrated  
10 reasonable prospects for a viable plan. All parties can agree  
11 that the current plan on file is not a final plan. Normally,  
12 the Court believes that exclusivity is more about whether the  
13 debtors should be given more time to confirm a plan rather than  
14 the plan on file.

15 But stated simply, time is simply not on the debtors'  
16 side. The debtors would have to use a 30-day extension to  
17 model out a new plan, find or confirm a plan sponsor, and  
18 negotiate terms. As of today, the debtors have no reasonable  
19 prospects of a viable plan.

20 The next factor is whether the debtor has made  
21 progress in negotiations with its creditors. As already  
22 mentioned, what was a fight with one party, Intercity, has  
23 morphed into a fight with all parties in interest. Progress  
24 has been made in the litigation and other aspects of the  
25 bankruptcy case, but unfortunately, progress has not been made

1 in negotiations with creditors as it pertains to the plan  
2 process. If anything, it has gotten worse the longer these  
3 debtors have been in bankruptcy.

4           Of great importance to this Court is that the Trustee  
5 itself has seemingly lost faith in the debtors' ability to move  
6 these cases forward. The debtors will not even be able to  
7 complete the litigation, which is at the core of the  
8 bankruptcy, barring an infusion of cash from an outside source  
9 and the trustee is currently unwilling to provide, excuse me,  
10 the DIP lender is currently unwilling to provide an extension  
11 of the DIP loan at this date. Rather, the Trustee and the DIP,  
12 UMB, have requested that the Court deny the motion to extend so  
13 that all parties may go back to the drawing board to propose a  
14 feasible exit from these cases.

15           Likewise, the Committee believes that it is in the  
16 best interest of the residents to open up discussions to viable  
17 alternatives for an exit. Although the Court recognizes the  
18 complexities this brings, including the expenses that would be  
19 attended to these complexities, I want to be clear that the  
20 Court is not inviting a competing plan process. The Court  
21 simply wants there to be a fair opportunity for parties to have  
22 open, fruitful discussions as to the bearing paths forward,  
23 whatever they may.

24           In sum, the debtors have failed to establish cause to  
25 extend exclusivity beyond October 27, 2022. Although I would

1 like to give the debtors more time, with a December 31st DIP  
2 maturity and no creditor support, the Court finds that it is in  
3 the best interest of all parties and the residents of the  
4 Edgemere for the motion to extend to be denied so as to allow  
5 the critical constituencies to discuss plan alternatives  
6 together.

7           On October 27, 2022, UMB and the debtor/Lifespace  
8 shall each possess the right to pursue plans of reorganization.  
9 Should any other party wish to file a plan, they must seek such  
10 authority before this Court. In this vein, there will be -- I  
11 think there is currently scheduled an October 26th omnibus  
12 hearing date. I'd like to use that date as a status  
13 conference/scheduling conference on a go-forward plan process.

14           Again, at that time, should negotiations have moved  
15 forward and the decision be to simply go forward with the  
16 debtors' plan process, we can go forward at that time. If  
17 there looks to be a competing plan process on the table, we can  
18 establish the scheduling of filing competing plans of  
19 reorganization, approval of various disclosure statements,  
20 solicitation, and establish confirmation hearing deadlines and  
21 the like.

22           And should any other party wish to file a plan in  
23 these cases, other than UMB and/or the debtor, in conjunction  
24 or separately, from Lifespace, again, I'd like the parties to  
25 request that authority timely so as to be heard at an

1 October 26th hearing.

2 That will conclude the Court's ruling on exclusivity.

3 Does anyone have any question?

4 (No audible response)

5 THE COURT: All righty. I understand from  
6 Ms. Vandesteeg that we may have a resolution on the protective  
7 order.

8 Mr. Switzer.

9 MS. VANDESTEEG: Thank you, Your Honor.

10 I think we need to address a couple of housekeeping  
11 matters --

12 THE COURT: Fair enough.

13 MS. VANDESTEEG: -- with respect to the adversary  
14 proceeding.

15 And, again, for the record, Elizabeth Vandesteeg on  
16 behalf of the adversary defendants.

17 MR. SWITZER: Jay Switzer for the debtor plaintiff.

18 MS. VANDESTEEG: First point, Your Honor, you had  
19 previously called the pending motion for entry of amended  
20 protective order.

21 I believe that we now do have sign-off on final  
22 language with respect to that amended protective order that has  
23 been signed off by all parties in interest so I suspect that  
24 that will be filed later today or tomorrow.

25 MR. SWITZER: Correct, Your honor. We'll file a

1 clean and cumulative red line marking changes against the  
2 original proposed order so everyone can see what they are, but  
3 I do believe we have agreement among all the parties.

4 THE COURT: Fair enough. If you'll file that red  
5 line for me and then you can upload the form of order so long  
6 as it's agreed if everyone's signature's attached.

7 MR. SWITZER: Very good.

8 THE COURT: I'm sure the Court will find it  
9 satisfactory.

10 MS. VANDESTEEG: Excellent.

11 Next point of housekeeping with respect to the  
12 adversary, Your Honor, is with respect to the scheduling order.

13 As we know, we're not yet quite in a position to set  
14 new dates. However, there are a couple of immediate pending  
15 deadlines per that pending scheduling order that we simply want  
16 to make very clear for the record are being held in abeyance.

17 The two that come to mind are Friday, September 30th,  
18 is currently the scheduled deadline for exchange of rebuttal  
19 expert reports, and October 14th is currently the scheduled  
20 discovery cutoff. And we want to make sure that it is very  
21 clear for the record that those dates are not going to be held  
22 and instead will be reset at some future date.

23 MR. SWITZER: And the debtor agrees with that, Your  
24 Honor.

25 THE COURT: Fair enough.

1 MS. VANDESTEEG: And I think the final points, Your  
2 Honor, deal with now scheduling for next week.

3 With respect to the few things that I believe now  
4 need to be set here at the end of the day, we have on  
5 October 5th, at 10:30, the Committee's motion for authority, as  
6 well as then status on the pending motion to dismiss.

7 THE COURT: Right.

8 MS. VANDESTEEG: Your Honor, we also now will need a  
9 continued status on the motions to compel. And we would like  
10 to take, with the full understanding that it is a wild card  
11 birthday of a day, the 9:30 a.m. slot on October 6th to come  
12 back before the Court on status on the motions to compel.

13 And I believe on that one, in particular, that we  
14 would like to make sure that there is a virtual hybrid option  
15 so that counsel can determine if they're going to be here or  
16 somewhere else.

17 THE COURT: Of course.

18 MR. SWITZER: Thank you, Your Honor.

19 THE COURT: And, again, I'll leave a hybrid option  
20 open for both this and for both the 5th and the 6th. And the  
21 reason being, again, we're talking about a status on a motion  
22 to dismiss. You're always welcome and the Court always open.  
23 But I just want to make sure, for the planning of witnesses and  
24 things of that nature, I don't want anyone to drive up to hear  
25 a motion to dismiss that we can't hear that day due to a lack

1 of time.

2 MS. VANDESTEEG: Certainly.

3 And to be clear, Your Honor did advise us that on the  
4 motion to dismiss, in particular, that is a status only. That  
5 is not set for evidentiary hearing, and we will make sure that  
6 we comply with that.

7 THE COURT: Excellent.

8 MR. SWITZER: And, Your Honor, if we could also just  
9 continue the motion to extend the scheduling over for status on  
10 the 6th as well --

11 THE COURT: The 6th?

12 MR. SWITZER: -- just to carry it with the motions to  
13 compel.

14 THE COURT: Got it.

15 MS. VANDESTEEG: Excellent.

16 THE COURT: Excellent.

17 You'll probably hear -- you may get confirmation on  
18 those dates from Ms. Jeng tomorrow. Again, Ms. Harden's out of  
19 town, so.

20 MS. VANDESTEEG: Thank you very much.

21 MR. SWITZER: Very good. Thank you.

22 THE COURT: Thank you.

23 All righty. Any other matters?

24 MR. JOHNSON: Nothing more on the debtors' side, Your  
25 Honor. Thank you.

1 THE COURT: Okay. Thank you.

2 Anything else, gentlemen?

3 UNIDENTIFIED SPEAKER: No, ma'am.

4 THE COURT: All righty.

5 UNIDENTIFIED SPEAKER: No, Your Honor. Thank you.

6 THE COURT: All right. Well, thank you all very

7 much, and the Court will stand adjourned for the day.

8 See you next week.

9 THE CLERK: All rise.

10 (Proceedings adjourned at 4:13 p.m.)

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

16 I, DIPTI PATEL, court approved transcriber, certify  
17 that the foregoing is a correct transcript from the official  
18 electronic sound recording of the proceedings in the above-  
19 entitled matter, and to the best of my ability.

20

21 /s/ Dipti Patel

22 DIPTI PATEL, CET-997

23 LIBERTY TRANSCRIPTS

DATE: September 30, 2022

24

25