IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
GENESIS CARE PTY LIMITED *et al.*,[1]	)	Case No. 23-90614 (DRJ)
Debtors.	)	(Jointly Administered)

AD HOC GROUP OF AUC PRIMARY PHYSICIANS' LIMITED OBJECTION AND RESERVATION OF RIGHTS WITH RESPECT TO THE DEBTORS' ONGOING SALE EFFORTS UNDER THE BIDDING PROCEDURES ORDER AT DOCKET NO. 321

The ad hoc group (the "Ad Hoc Group of AUC Physicians"), comprised of certain physicians (the "Physicians") of the Atlantic Urology Clinics ("AUC") owned and/or operated by Debtor Atlantic Urology Clinics, LLC, states as follows in support of this limited objection and reservation of rights (this "Limited Objection"):

1. The Ad Hoc Group of AUC Physicians have ongoing employment agreements with one or more Debtors to staff the facilities owned and/or operated by Debtor Atlantic Urologic Clinics, LLC (the "AUC Debtor"). Pursuant to the Bidding Procedures Order,[2] the Debtors are obligated to notify contract counterparties that their contracts are being assumed and assigned by September 27, 2023.

2. The Physicians are highly trained specialists in their respective highly specialized areas of medical practice. Thus, while the Physicians reserve the right to provide full briefing on this issue at the appropriate time, it is more likely than not that this Court will agree that the

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/GenesisCare. The location of Debtor's principal place of business and the Debtors' service address in these chapter 11 cases is: 2270 Colonial Blvd., Fort Myers, FL 33907.

[2] *See Order (I) Approving the Bidding Procedures, (II) Approving Bid Protections, (III) Establishing Related Dates and Deadlines, (IV) Approving the Form and Manner of Notice Thereof, (V) Approving Contract Assumption and Assignment Procedures, and (VI) Granting Related Relied* [Docket No. 321] (the "Bidding Procedures Order").

applicable employment agreements are personal service contracts, with non-delegable duties that cannot be assigned as set forth under § 365(c)(1) of the Bankruptcy Code. While most of the Physicians would likely agree to have their employment agreements assumed and assigned to a qualified bidder, under the proper terms, the Debtors are not allowing the Physicians to engage with any prospective bidders concerning the terms of their future employment. Prospective bidders are similarly precluded from engaging the Physicians on such matters.

3. This Court told the Debtors loud and clear in the first day hearings: "the value of your company lies in the people that you lead." Tr. First Day Hrg., June 1, 2023, p. 37:1-2 [Docket No. 140]. In other words, the value of the Debtors' assets lies in the people like the Physicians, who are being precluded from engaging in discussions and negotiations with prospective purchasers of the AUC and other assets.

4. To add insult to injury, the Physicians (and many of the Debtors' other employees) have all received notifications from the Debtors that, notwithstanding many assurances from the Debtors that all compensation due and owing would be paid in the ordinary course, the Physicians' (and other employees') earned and accrued, pre- and post-petition compensation, including deferred compensation in the millions of dollars, is now at risk. Even valid post-petition administrative claims may not be protected.[3]

5. Given that the Debtors are also not allowing prospective bidders to engage with the Physicians that comprise the value of the assets that are for sale (and the primary source of the Debtors' revenue), the Court should consider extending the applicable deadlines in the Bidding Procedures Order to ensure that the Debtors are soliciting offers that are truly in the best interests

[3] As the Physicians are reading the plan, administrative claims may be capped under certain instances.

of the estates, including the Physicians who are ensuring the highest degree of care and responsibility for the Debtors' patients.

6. The Physicians have raised previously with the Debtors their objections to the sale process through correspondence with the Debtors' professionals. *See* **Exhibit A**. The lack of progress with the Debtors has left the Physicians with no choice but to raise these issues with the Court and other interested parties.

7. The Physicians respectfully object to any sale that may be proposed under the Bidding Procedures, absent extensions of the applicable deadlines to ensure that the Debtors are truly maximizing the value of their assets. This includes ensuring that the Physicians and other employees have a full and fair opportunity to have their practices properly managed and staffed, and that—in the Court's own words—"nobody in a suit and tie ever shows up and says, 'I want a paycheck back, or you're not going to get paid for what you do.'" Tr. First Day Hrg., June 1, 2023, p. 37:6-9 [Docket No. 140].

8. As of the filing of this Limited Objection, the Physicians' worst fears are being realized. The Physicians hope that the Debtors reconsider their present position and allow prospective bidders to engage directly with the Physicians and employees to maximize the value of the Debtors' assets and ensure that the Physicians and employees are being fully compensated for their work. As the process is currently playing out, however, the Physicians are left with no alternatives other than to raise this Limited Objection and reserve their rights to bring additional objections before the Court at the appropriate time.

WHEREFORE, the Ad Hoc Group of AUC Physicians respectfully requests that the Court deny any sale or transaction under the Bidding Procedures inconsistent with this Limited Objection and grant such other and further relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 22nd day of September, 2023.

GRAY REED

By: */s/ Aaron M. Kaufman*

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Counsel to the Ad Hoc Group of AUC Physicians

Certificate of Service

I certify that on September 22, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. Pursuant to the Bidding Procedures, a copy of this Limited Objection will be served via e-mail to the following Notice Parties:

To the Debtor:
Kirkland & Ellis LLP
Joshua A. Sussberg, joshua.sussberg@kirkland.com
Steven N. Serajeddini, steven.serajeddini@kirkland.com

Jaimie Fedell, jaimie.fedell@kirkland.com

Jackson Walker LLP
Matthew D. Cavenaugh, mcavenaugh@jw.com

Jennifer F. Wertz, jwertz@jw.com

Genevieve M. Graham, ggraham@jw.com

To the Committee:
Akin Gump Strauss Hauer & Feld LLP
Scott Alberino, salberino@akingump.com

Kramer Levin Naftalis & Frankel LLP
Rachael Ringer, rringer@kramerlevin.com

/s/ Aaron M. Kaufman
Aaron M. Kaufman

Exhibit A

Reply to 8/15/23 Sales Update e-mail, from Shaden Marzouk, MD MBA – President GenesisCare USA

Subject: Genesis Care U.S. ("Genesis")

Shaden, thank you for this update, dated 8/15/2023. Genesis is pleased with the progress achieved in the sale process, per the Auction Notice. We are writing in response to your email at the request and on behalf of the physicians listed as attached.

The AUC Physicians have asked that we, the Executive Committee, Timothy Gajewski, MD, Brian Roberts, MD, and Timothy Quillen, MD, put GenesisCare U.S. and its counsel on written notice, while the AUC Physicians will, of course, evaluate all reasonable offers to purchase Atlantic Urology Clinics, LLC ("AUC") and / or its assets, particularly as transactions would affect the employment status of the AUC Physicians, we do not consent to any assumption and/or assignment of any Provider and Employment Agreements with AUC. While the Provider Agreements may or may not be assignable, the Employment Agreements may not be assigned and assumed, in accordance with 11 L1. S.K. Sec. 365 (c)(i) and applicable caseload. Given the special skills and abilities of the AUC Physicians, "personal service" is the essence of our contractual obligations, if any remain. As Personal Service Agreements, they are not susceptible to assumption and assignment. Accordingly, all our rights and interests as AUC Physicians in this respect are hereby reserved.

The AUC Physicians do not support the sale of AUC to an as-yet unknown purchaser and will consider every legal option available to protect our ability to practice medicine free from corporate interference. We will be evaluating our employment agreements, the original AUC Membership Interest purchase agreement, and all other relevant documents in this regard. Please also be advised that, depending on the level of interest in AUC, the AUC Physicians may also consider bidding for the purchase of AUC.

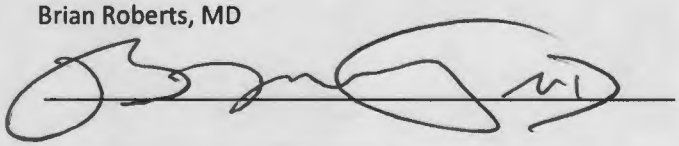
We respectfully request that you provide this correspondence to your counsel and to all interested bidders for AUC, so that they are made aware of the AUC Physicians' position on this matter and can proceed accordingly.

Respectfully,

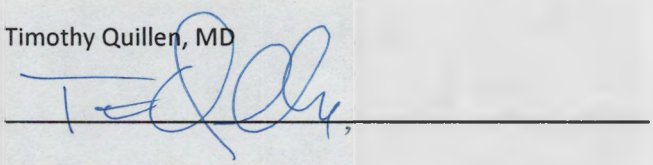
Atlantic Urology Clinics, LLC
Executive Committee Physicians, *on behalf of AUC Physicians*

Timothy Gajewski, MD

Brian Roberts, MD



Timothy Quillen, MD



AUC Physicians

Roberto F. Ferraro, MD

James D. Fogarty, DO

Walter L. Frank III, MD

Timothy A. Gajewski, MD

Glenn R. Gangi, MD

Robert M. Jansen, MD

Timothy J. Quillen, MD

David D. Rich, MD

Brian J. Roberts, MD

Neal D. Shore, MD

Abhishek Srivastava, MD

Joseph C. Wood, MD

Richard W. Young, MD