

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: SOUTH HILLS OPERATIONS, LLC <i>et al.</i> , ¹ <i>Debtor.</i>	Bankruptcy. No. 24-21217-CMB Chapter 11 (Jointly Administrated)
CIBC BANK, USA, <i>Movant,</i> v. SOUTH HILLS OPERATIONS, LLC, <i>et al.</i> <i>Respondents.</i>	Related Doc. Nos: 257 and 901 Hearing Date: March 13, 2025 at 10:00 a.m. Response Deadline: March 6, 2025, at 4:00 p.m.

**OBJECTION AND RESERVATION OF RIGHTS TO
CIBC BANK, USA’S MOTION TO DISMISS THE CHAPTER 11 CASES**

The Official Committee of Unsecured Creditors (the “Committee”), by and through its undersigned counsel, files this *Objection and Reservation of Rights to CIBC Bank, USA’s* (“CIBC”)

¹ The Debtors in these chapter 11 cases (the “Cases”), along with the last four digits of each Debtor’s federal tax identification number are: South Hills Operations, LLC (5527); Monroeville Operations, LLC (3280); Mt. Lebanon Operations, LLC (1133); Murrys ville Operations, LLC (9149); Cheswick Rehabilitation and Wellness Center, LLC (9561); 3876 Saxonburg Boulevard Propco, LLC (3618); North Strabane Rehabilitation and Wellness Center, LLC (1677); 100 Tandem Village Road Propco, LLC (1918); Maybrook-C Briarcliff Opco, LLC (5187); Maybrook-C Briarcliff Propco, LLC (1823); Maybrook-C Evergreen Opco, LLC (5388); Maybrook-C Evergreen Propco, LLC (2000); Maybrook-C Kade Opco, LLC (4033); Maybrook-C Kade Propco, LLC (2097); Maybrook-C Latrobe Opco, LLC (4148); Maybrook-C Latrobe Propco, LLC (2178); Maybrook-C Overlook Opco, LLC (7081); Maybrook-C Overlook Propco, LLC (6804); Maybrook-C Silver Oaks Opco, LLC (7146); Maybrook-C Silver Oaks Propco, LLC (9654); Maybrook-C Whitecliff Opco, LLC (6211); Maybrook-C Whitecliff Propco, LLC (4835). The Debtors’ address is 485 Lexington Avenue, 10th Floor, New York, NY 10017.

Motion to Dismiss the Chapter 11 Cases (the “Objection”)². In support of this Objection, the Committee states as follows:

JURISDICTION

1. This Court has jurisdiction of these cases pursuant to 28 U.S.C. §§ 1408 and 1409.
2. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

PRELIMINARY STATEMENT

3. CIBC does not meet its burden of demonstrating cause for dismissing the Cases. And now, nine months since these Cases were initiated, there is a realistic prospect of a resolution that will provide for a liquidating plan. The Motion to Dismiss is CIBC’s latest litigation tactic to box out the Committee and the creditors from any chance of a recovery and is entirely unsupported.

4. These bankruptcy cases were commenced, and have been prosecuted, to solely benefit CIBC (and the Debtors’ insiders).

5. Problems began after the pandemic subsided, when the Debtors encountered liquidity issues. Fearing that those headwinds might derail their operations, the Debtors looked for a buyer. They identified one, but for at least three reasons the deal fell apart. First, the Debtors could not satisfy their obligations to the Pennsylvania Department of Human Services (the “DHS”). Second, the proposed new operator feared legal exposure to the U.S. Department of Labor (“DOL”) as the Debtors’ putative “successor.” Third, the DOL sought an injunction to stop the sale.

² Capitalized terms used and not otherwise defined herein have the meaning ascribed thereto in the Motion to Dismiss [Dkt. No. 901].

6. Frustrated, the Debtors hired outside firms to search for another buyer. They found three and the Debtors chose one: Kadima Healthcare Group, Inc. (“Kadima”). But the problems that undercut the first deal still loomed. Therefore, the Debtors (on information and belief, with CIBC’s prior knowledge or blessing) opted to follow a different path this time: Chapter 11 bankruptcy. That path would enable the Debtors to leave any accrued DHS liabilities behind in the estates, to “cleanse” the Debtors’ assets from those and any other successor liability claims, to obtain the Commonwealth’s approval to transfer bed licenses to Kadima, and to close the Kadima sale. The ultimate beneficiary of the bankruptcy process, CIBC, would try to grab all the sale proceeds – while leaving everyone else holding an empty bag.

7. For CIBC, closing the sale and pocketing the sale proceeds was all that mattered. Since these cases began, CIBC stood by while the Debtors failed to file any monthly operating reports, despite the law and the Committee’s protestations. Despite attending numerous hearings when the Committee complained about the lack of financial transparency and reporting – CIBC said nothing.

8. Presumably known to CIBC but unknown to the Committee, the Debtors were also allegedly failing to submit required reports to CIBC and were in allegedly in default of certain debtor-in-possession loan covenants to CIBC.

9. The Debtors’ failure to timely report anything, coupled with CIBC’s silence about the alleged defaults, kept the Committee and the Court in the dark for months regarding the estates’ growing administrative insolvency. Notwithstanding, the proposed sale benefited the residents and seemed to make economic sense. Unsecured creditors still could potentially recover something from avoidance actions and any D&O claims under a chapter 11 plan.

10. Perhaps the only other action important to CIBC other than closing the sale was running off with the sale proceeds— avoiding a chapter 7 conversion. An early conversion in this case would burn this meticulously crafted plan down.

11. The Debtors' lack of transparency and CIBC's refusal to reveal anything served CIBC's objectives. It held the Committee at bay and kept the sale prospects alive for CIBC's benefit.

12. As these Cases progressed, and the time came for a sale hearing, CIBC made concessions to avoid last-minute objections from the Committee that might have impeded or delayed the sale. CIBC made those concessions on the record at the hearing and in the order approving the sale to Kadima. CIBC agreed expressly that it would work in good faith with the Committee and Debtors to formulate a chapter 11 under which the Committee would be empowered to pursue avoidance, recovery, and other causes of action. CIBC also agreed to set aside approximately \$11 million of the anticipated sale proceeds which could potentially be used to pay some or all of the estates' wind-down expenses or be used to fund a consensual exit strategy. Based on CIBC's promises, the Committee did not raise any other concerns regarding the sale. Afterwards, the Committee began negotiating with the Debtors about what a chapter 11 plan would look like in these cases.

13. It now is clear that, at the time, CIBC made those promises on the record and in the Sale Order, CIBC never had any intention of fulfilling them. A mere eight days after the Sale Order was entered, CIBC shockingly delivered a notice of default to the Debtors. CIBC cited the Debtors' failures to timely report and related covenant violations. All of which alleged defaults existed for weeks or months. CIBC knew or reasonably should have known about all of them before the sale hearing convened. Yet, CIBC stayed silent: It did not disclose that those defaults

existed to the Committee or the Court during the hearing or before the Court entered the Sale Order. Nor did CIBC disclose that it intended to declare a default.

14. The Court entered an order approving the sale on September 30, 2024 which sale ultimately closed on November 1, 2024 (the “Sale Closing”)

15. Interestingly, on October 31, 2024, the Debtors, CIBC, and the Committee filed a *Consent Motion to Continue/Reschedule Hearing On Committee’s Derivative Standing Motion* (the “Consent Motion”) [Dkt. No. 807]. The Court subsequently entered an order continuing the hearing on the Committee’s Standing Motion to December 9, 2024 [Dkt. No. 810].

16. Then, on November 14, 2025, a mere (13) days after the Sale Closing and after CIBC received the bulk of the sale proceeds, CIBC moved for relief from stay and contemporaneously filed a motion to dismiss the cases entirely. The timing of CIBC’s notice of default and two motions speaks volumes: It is reasonable to infer that CIBC’s promise to work collaboratively with the Committee on a chapter 11 plan was a ruse, designed to mollify the Committee so that it would not make further demands about the sale. It also is reasonable to infer that, once the Court approved the sale and the sale closed, CIBC had no further use for the Debtors’ bankruptcies. The cases had served CIBC’s purposes. Now, CIBC simply wants the cases to go away, to avoid any repercussions for CIBC. And the Debtors’ insiders unquestionably favor that outcome too, lest they have to explain their actions before and during the bankruptcies and, potentially, answer for any misdeeds.

17. These cases should not be prosecuted solely to benefit the Debtors’ secured lender and insiders.

18. Most importantly, there is a road to a confirmable plan of liquidation for these Cases. That road requires CIBC to, at minimum, provide lip service to its representation and commitment to engage in good faith efforts to move a plan forward.

BACKGROUND

19. On May 17, 2024, (the “Petition Date”) the Debtors filed the above-captioned bankruptcy cases.

20. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. May 21, 2024, the Court entered an order directing the joint administration of the Debtors’ chapter 11 cases pursuant to section 105(a) of the Bankruptcy Code. No trustee or examiner has been appointed in the chapter 11 cases.

21. On May 30, 2024, under section 1102(a)(1) of the Bankruptcy Code, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Committee.

22. On May 31, 2024, the undersigned counsel was retained for the purpose of representing the Committee.

23. On May 22, 2024, the Court entered its *Interim Order (I) Authorizing the Maybrook and Consulate Debtors to Obtain Postpetition Financing, (II) Authorizing the Maybrook and Consulate Debtors to Use Cash Collateral, . . . and (VI) Granting Related Relief* [Dkt. No. 97] (the “Interim DIP Order” and together with the Final DIP Order (the “DIP Orders”). The Court entered the Final DIP Order on June 17, 2024.

24. The DIP Orders provide that “[t]he Debtors . . . the Committee, [] and CIBC, **agree to cooperate in good faith for purposes of crafting, preparing, and filing a Chapter 11 plan or other mutually-acceptable exit, which mutually-acceptable exit would include a provision**

authorizing the Committee, or its designee, to administer any and all remaining claims and causes of action.” See DIP Orders at ¶58 (emphasis added).

25. In fact, at the June 13, 2024 final hearing on entry of the Final DIP Order, the following statements were entered into the record with respect to the intent of the Committee, the Debtors, and CIBC to prepare and pursue a chapter 11 plan to conclude the cases:

MR. BURKLEY (counsel for the Committee): The only thing I would add is that this also *contemplates an understanding or a loose agreement to put together a plan at the end of the case where the Committee or its designee in consultation with the parties controls this litigation process* to effectuate this split. So, that was the only other comment that I had.

MR. SCHLAN (counsel for CIBC): **Yes, Your Honor, that’s correct.**

See Dkt. No. 262, Tr. Regarding Hr’g Held 50:20-25-51:2, June 13, 2024. (emphasis added).

26. Thus, as early as June 13, 2024, the parties understood and agreed that they would submit a chapter 11 plan once the sales were approved, rather than simply dismissing the cases or converting them to chapter 7.

27. On May 24, 2024, the Debtors filed a *Motion to Sell Property Free and Clear of Liens under Section 363(f) Debtors’ Motion for Entry of Orders (A) Approving Sale of Substantially All of the Maybrook and Consulate Debtors’ Assets, Other Than Accounts, Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Approving Bid Procedures for Sale of Substantially All of the Maybrook and Consulate Debtors’ Assets, Other Than Accounts, (C) Approving Stalking Horse Bid Protections, (D) Scheduling Auction For and Hearing to Approve the Sale of the Maybrook and Consulate Debtors’ Assets, (E) Approving Form and Manner of Notice of Sale, Auction, and Sale Order Hearing, (F) Approving Assumption and Assignment Procedures, (G) Authorizing Assumption and Assignment of Executory Contracts and Unexpired*

Leases, and (H) Granting Related Relief (the “Sale Motion”) [Dkt. No. 125], in which they sought authority to sell certain of their assets (collectively, the “Maybrook/Consulate assets”) to the person making the highest and best bid for them.

28. The Debtors filed their Notice of Successful Bid [Dkt. No. 380] and cancelled the auction contemplated by the Sale Motion.

29. The Court originally scheduled a hearing on the Sale Motion (the “Sale Order Hearing”) for August 5, 2024.

30. The Sale Order Hearing was subsequently adjourned and rescheduled multiple times [Dkt. Nos. 456, 491, 592, 619] and a final hearing was scheduled for September 30, 2024.

31. On September 30, 2024, the Court entered an order approving the Sale Motion (the “Sale Order”) for a purchase price of \$53,000,000.00 [Dkt. No. 701].

32. The Debtors identified Kadima as the proposed buyer of the Maybrook/Consulate assets for a total price of \$53,000,000.00 (the “Purchase Price”).

33. On October 8, 2024, a mere eight (8) days after the Court entered the Sale Order, CIBC served upon the Debtors a notice of occurrence of events of default (“Notice of Default”).

34. On October 13, 2024, the Debtors filed, with CIBC Bank USA’s (“CIBC” and at times collectively referred to with the Debtors and the Committee as the “Parties”) consent, a 9019 motion to resolve certain “Events of Default”³ identified in the Notice of Default. *See* Consent Motion for Order Approving Settlement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “9019 Motion”) [Dkt. No. 779].

³ Capitalized terms not otherwise defined herein have the meaning given to them in the 9019 Motion.

35. Responses to this Motion to Dismiss were originally due on December 2, 2024, with the Court scheduling a hearing for December 9, 2024.

36. The Parties have agreed to continue the response date and time for hearing on the Motion to Dismiss several times. *See* Dkt. Nos. 1002 and 1004.

37. Currently, the time to respond to the Motion to Dismiss is March 6, 2025 at 4:00 p.m. (EST) and a hearing is scheduled for March 13, 2025 at 10:00 a.m. (EST).

OBJECTION

38. “Chapter 11 is not a game to be used for sport against creditors for the benefit of insiders.” *See generally* M. Bienenstock, *Bankruptcy Reorganization* 2-4 (1987) (discussing “Equity Policy” and “Reorganizational Policy”).

39. Dismissal, at this point in these Cases, will result in a windfall for the insiders of the Debtors and the Debtors’ sole benefiting secured creditor—CIBC.

40. In the 9019 Motion, among the purported “Events of Default” (and each a “Default”) CIBC cites in the Notice of Default are:

- The Debtors “fail[ure] to provide [CIBC] with internally prepared consolidated and consolidating financial statements . . . for the months of June 2024 and July 2024”;
- The Debtors “fail[ure] to provide [CIBC] with an Approved Budget since August 2, 2024,” which was a weekly covenant to be provided “every Friday”; and
- The Debtors “fail[ure] to pay real estate taxes prior to delinquency.”

41. Each of these Defaults had existed for months by the time the Sale Hearing took place and before the Court entered the Sale Order. CIBC knew (or reasonably should have known) that these Defaults existed before the Sale Hearing concluded.

42. Instead, CIBC sat on these Defaults and did not apprise the Court or the Committee of the Defaults before or during that Sale Hearing or before the Court entered the Sale Order (which Sale Order was heavily negotiated by the Debtors, CIBC and the Committee) approving the assets sales that CIBC so desperately wanted the Debtors to consummate. Furthermore, CIBC did not inform the Court or the Committee before, during, or after the Sale Hearing or at any time before entry of the Sale Order that CIBC intended to declare these Defaults and abandon its multiple representations that “[i]n accordance with Paragraph 58 of the Final DIP Order, the DIP Agent and CIBC shall work in good faith with the Debtor and the Committee on crafting, preparing, and filing a Chapter 11 plan or other mutually acceptable exit of these Chapter 11 Cases” (Sale Order at Paragraph 15).

43. Rather, CIBC laid in waited until shortly after the Court entered the Sale Order before declaring these minor Defaults for the first time – thus setting the stage to achieve its ultimate objective: effectuating an asset sale to line only its pockets, while bootstrapping a diminution in value claim and subsequently seeking to have these cases dismissed outright in an effort to protect CIBC (and the insiders) from any liability.

44. Not only does CIBC’s Notice of Default and subsequent Motion to Dismiss run contrary to the spirit of cooperation CIBC represented to this Court, but CIBC’s actions breach the terms of the DIP Orders and the Sale Order that bound CIBC to participate in good faith to move these cases forward and towards an orderly exit via a chapter 11 plan.

45. Furthermore, the Debtors’ failure to pay taxes is a breach of the Debtors’ duty to pay taxes under the Bankruptcy Code and, more importantly, the Debtors’ fiduciary duties owed to these bankruptcy estates.

46. In fact, by funding the budgets that provided no payment of administrative expenses and post-petition Nursing Facility Assessments, CIBC knew of the Debtors' breach of their fiduciary duties owed to these estates and their creditors.

47. Moreover, CIBC never fully funded the post-petition DIP financing, which if otherwise fully funded, would ensure that no, or at least minimal, administrative claims would remain unpaid.

48. On October 13, 2024, the Debtors and CIBC coordinated the filing of the 9019 Motion.

49. By filing the 9019 Motion, CIBC and the Debtors seek to box out the Committee and prematurely bring an end to these Cases.

50. On November 1, 2024, the Sale of the Maybrook/Consulate assets to Kadima closed, resulting in CIBC receiving the sum of \$37,891,762.27 from the sale proceeds and \$13,568,804.00 of the net proceeds being segregated pending further order of this Court.

51. CIBC narrowed its focus on the final goal. On November 14, 2024, after finally obtaining its self-interested result in these cases, CIBC simultaneously filed (i) this Motion to Dismiss and (ii) a motion for relief from stay ("MFRS") [Dkt. No. 901].

52. If the Motion to Dismiss and/or the MFRS are granted and approved by this Court, CIBC obviously knows – and presumably intends – to insulate CIBC (as well as the Debtors' insiders) from any claims and recovery actions under a chapter 11 plan of liquidation and, at the same time, preventing prepetition general unsecured creditors from recovering anything in these cases under any such plan.

I. Legal Standard for Dismissal

53. Under section 1112(b) of the Bankruptcy Code, upon a party in interest's motion, a court may only dismiss a chapter 11 case or convert it to chapter 7 if the movant demonstrates "cause" to do so. 11 U.S.C. § 1112(b)(1); *see also In re Kingbrook Dev. Corp.*, 261 B.R. 378, 379 (Bankr. W.D.N.Y. 2001) ("[T]his court may dismiss a Chapter 11 case only on motion and upon a showing of good cause."); *In re Loco Realty Corp.*, No. 09-11785 (AJG), 2009 Bankr. LEXIS 1724, 2009 WL 2883050, at *2 (Bankr. S.D.N.Y. June 25, 2009).

54. Cause includes "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

55. If the Court determines there is cause to dismiss or convert, it must also: (i) decide whether dismissal, conversion, or the appointment of a trustee or examiner is in the best interests of creditors and the estate; and (ii) identify whether there are "unusual circumstances" that establish that dismissal or conversion is not in the best interests of creditors and the estate. 11 U.S.C. § 1112(b)(1), (b)(2).

56. Bankruptcy judges have wide discretion to determine whether cause exists to dismiss or convert a case under section 1112(b). *In re BH S&B Holdings, LLC*, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010).

57. In *In re Kingbrook Dev. Corp.*, Judge Bucki denied a motion to dismiss where the debtor had failed to file a plan or disclosure statement and its secured creditor was in a position of advantage, having completed a foreclosure of the debtor's real property and proposed a reorganization plan. *Kingbrook Dev. Corp.*, 261 B.R. at 379.

58. The *Kingbrook* court rejected dismissal, stating: "In filing its voluntary petition for relief, the debtor obtained the protections of Chapter 11, but on condition of its acceptance of the

restrictions and limitations of the bankruptcy process... A dismissal of the bankruptcy case at this time would remove the various protections that the bankruptcy process has ordained for the benefit of creditors.” *Id.* at 379.

59. In particular, a dismissal would eliminate avoidance actions and other causes of action held by the estate, as well as the ability of the bankruptcy court to assure a recovery for the benefit of creditors. *Id.* at 379-80 (“[A] dismissal will have the effect of returning to the debtor any claim of lender liability, but with none of the bankruptcy safeguards to assure that its value will inure to the benefit of creditors. Similarly, a dismissal may effectively eliminate any cause of action to avoid the transfer of assets.”).

60. Under such circumstances, where there was no affirmative consent by creditors regarding dismissal, the court refused to “deprive creditors of the bankruptcy protections and rights to which they are now entitled.” *Id.* at 380.

61. In deciding whether to grant a debtor’s motion to dismiss its chapter 11 case, courts consider the interests of all of the creditors of the estate and have compared “the creditors’ interests in bankruptcy with those they would have under state law. *In re Cont’l Holdings*, 170 B.R. 919, 927 (Bankr. N.D.Ohio 1994).

62. Where creditors’ ability to pursue claims or collect on judgments would be delayed by dismissal, a debtor’s motion to dismiss should be denied. *See id.* (“Should dismissal be granted, the DIP’s unsecured creditors, who have been held at bay for approximately 18 months, would be required to pursue their claims against the DIP in state court,” noting “this remedy may not now be speedy or adequate due to the delay experienced as a result of [the DIP’s] petition.”).

63. Dismissal of a debtor's case is also prejudicial to creditors where the debtor may file another chapter 11 petition after dismissal. *See id.* at 928 (dismissal would not protect creditors if DIP files another chapter 11 petition; motion to dismiss denied and conversion granted).

II. There is No Cause to Dismiss the Cases under Section 1112(b)(1)

64. CIBC argues that there is cause for dismissal because of “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” *See Motion at ¶ 36.*

65. The Debtors' estates will not be saving professional fees through dismissal. Rather they will expose themselves to even more substantial professional fees.

66. If these Cases are not dismissed, there will not be a substantial increase in expenditures—the only continuing bankruptcy-related administrative expense would be for (i) settlement activity and negotiations towards a consensual resolution, (ii) pursuit of the currently pending adversary proceeding against CIBC, which is a valuable asset of these estates that, in the Committee's view, could increase amounts available to unsecured creditors by millions of dollars, and (iii) pursuit of potential claims against the insiders, and the underlying insurance policies, of these estates.

III. Unusual Circumstances Exist Establishing that Dismissal is not in the Best Interests of Creditors under Section 1112(b)(2)

67. Even if the Court finds that “cause” exists to dismiss the Case, it has wide discretion to deny dismissal based on unusual circumstances. *In re 1031 Tax Grp., LLC*, 374 B.R. 78, 93-94 (Bankr. S.D.N.Y. 2007).

68. Under section 1112(b)(2), the Court need not convert or dismiss a case if it identifies unusual circumstances establishing that dismissal is not in the best interests of creditors and the estate, and the party opposing dismissal demonstrates that (A) there is a reasonable

likelihood that a plan will be confirmed within a reasonable period of time, (B) the grounds for dismissal is something other than continuing loss or diminution to the estate and the absence of a reasonable likelihood of rehabilitation, and there is reasonable justification for the act or omission constituting cause for dismissal and the act or omission will be cured within a reasonable period of time fixed by the court.

69. A determination of unusual circumstances is fact intensive and contemplates facts not common to most chapter 11 cases.

70. Courts have recognized pending adversary proceedings as being among such “unusual circumstances.” *In re Hermanos Torres Perez, Inc.*, No. 09-5585, 2011 Bankr. LEXIS 4527, at *17 (Bankr. D.P.R. Nov. 21, 2011) (even if the creditor could establish cause to convert, a pending adversary proceeding against the creditor was an unusual circumstance and the other elements of 1112(b)(2) were satisfied).

71. Absence of support for dismissal by other creditors is an unusual circumstance. *In re Franmar, Inc.*, 361 B.R. 170, 180 (Bankr. D. Colo. 2006) (“[T]he court finds and specifies that unusual circumstances exist justifying no dismissal; to wit: none of the creditors in this case have joined the UST in this motion and dismissal serves neither them nor the Debtor.”). *Cf. Kingbrook Dev. Corp.*, supra, 261 at 380 (denying motion to dismiss for cause, noting “Absent either the affirmative consent of all creditors to a dismissal or proof of full repayment of unsecured claims, this court is disinclined to deprive creditors of the bankruptcy protections and rights to which they are now entitled.”).

72. And unusual circumstances exist where allowing the debtor’s estate to “limp along” is preferable to creating chaos, and resolution of a pending adversary proceeding would enable a plan proponent to propose a confirmable plan. *In re Hyperion Found., Inc.*, No. 08-51288, 2009

Bankr. LEXIS 4647, at *20-25 (Bankr. S.D. Miss. Aug. 11, 2009) (the United States Trustee failed to demonstrate cause and, even if it had, unusual circumstances supported denial of dismissal subject to a timeline for the submission of reports and further actions).

73. Here, unusual circumstances support denial of dismissal to allow the Committee, or any other successor in interest to the Debtors, to pursue claims against CIBC and/or the insiders of the Debtors.

74. Dismissal at this time would reward CIBC and the Debtors' insider for their intransigence while causing further delays and disruption to the Committee's primary objective of proposing and confirming a liquidating plan, along with pursuing all claims in the pending adversary proceedings – i.e., insurance coverage actions, fraudulent transfer, etc.

75. These Cases are complex and involve CIBC and certain individual and entity insiders that are not directly before the Court. There is a reasonable likelihood that a plan could be confirmed.

76. CIBC does not seek dismissal because of continuing losses or diminution of the estates without any likelihood of rehabilitation. Rather, the Motion to Dismiss is CIBC's strategic effort to block the other creditors of these estates from pursuing significant recovery actions. CIBC's misrepresentations and unfair tactics can and should be prevented by denying the Motion to Dismiss. Accordingly, unusual circumstances exist under section 1112(b)(2), and for this additional reason, the Motion to Dismiss should be denied.

RESERVATION OF RIGHTS

77. The Committee expressly reserves the right to: (i) supplement this Objection at any time prior to the hearing; and (ii) raise additional or further objections to the Motion to Dismiss.

WHEREFORE, the Committee respectfully requests that the Court deny the Motion to Dismiss and grant to the Committee such other and further relief as is just and appropriate.

Dated: March 6, 2025

Respectfully Submitted,

BERNSTEIN-BURKLEY, P.C.

By: /s/ Kirk B. Burkley

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: SOUTH HILLS OPERATIONS, LLC <i>et al.</i> , ⁴ <i>Debtor.</i>	Bankruptcy. No. 24-21217-CMB Chapter 11 (Jointly Administrated)
CIBC BANK, USA, <i>Movant,</i> v. SOUTH HILLS OPERATIONS, LLC, <i>et al.</i> <i>Respondents.</i>	Related Doc. Nos: 257 and 901 Hearing Date: March 13, 2025 at 10:00 a.m. Response Deadline: March 6, 2025, at 4:00 p.m.

ORDER OF COURT

This ____ day of March 2025, upon consideration of the *Objection and Reservation of Rights to CIBC Bank, USA'S Motion to Dismiss the Chapter 11 Cases* (the "Objection"), it is hereby **ORDERED**

1. the Objection is SUSTAINED; and

⁴ The Debtors in these chapter 11 cases (the "Cases"), along with the last four digits of each Debtor's federal tax identification number are: South Hills Operations, LLC (5527); Monroeville Operations, LLC (3280); Mt. Lebanon Operations, LLC (1133); Murrys ville Operations, LLC (9149); Cheswick Rehabilitation and Wellness Center, LLC (9561); 3876 Saxonburg Boulevard Propco, LLC (3618); North Strabane Rehabilitation and Wellness Center, LLC (1677); 100 Tandem Village Road Propco, LLC (1918); Maybrook-C Briarcliff Opco, LLC (5187); Maybrook-C Briarcliff Propco, LLC (1823); Maybrook-C Evergreen Opco, LLC (5388); Maybrook-C Evergreen Propco, LLC (2000); Maybrook-C Kade Opco, LLC (4033); Maybrook-C Kade Propco, LLC (2097); Maybrook-C Latrobe Opco, LLC (4148); Maybrook-C Latrobe Propco, LLC (2178); Maybrook-C Overlook Opco, LLC (7081); Maybrook-C Overlook Propco, LLC (6804); Maybrook-C Silver Oaks Opco, LLC (7146); Maybrook-C Silver Oaks Propco, LLC (9654); Maybrook-C Whitecliff Opco, LLC (6211); Maybrook-C Whitecliff Propco, LLC (4835). The Debtors' address is 485 Lexington Avenue, 10th Floor, New York, NY 10017.

2. The Motion to Dismiss is DENIED.

IT IS SO ORDERED.

Carlota M. Böhm, Judge
United States Bankruptcy Court