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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF ARIZONA**

In Re:

LEGACY CARES, INC, an Arizona non-profit corporation.

Debtor.

Chapter 11

Case No. 2:23-bk-02832-DPC

**KEARNEY ELECTRIC'S  
OBJECTION TO THE DEBTOR'S  
MOTION FOR ORDERS ET AL.  
[DOC. 3]**

Hearing Date: May 25, 2023  
Time: 1:00 PM  
Courtroom: 603

Kearney Electric, Inc. ("Kearney Electric"), by and through undersigned counsel, hereby objects to the *Motion for Orders (I) Authorizing the Debtor to Obtain Postpetition Financing on Priming, Superpriority and Secured Basis; (II) Permitting Use of Cash Collateral; (III) Granting Interim and Additional Relief; and (IV) Schedule a Final Hearing Under bankruptcy Rule 4001(c)* [Doc. 3] ("Motion") filed by Legacy Cares, Inc. (the "Debtor"). While Kearney Electric appreciates the Debtor's inability to operate on a go forward basis without use of cash collateral and the \$9MM debtor-in-possession loan, the Motion seeks approval of a "Credit Agreement" between the Debtor and UMB Bank, N.A., as Trustee ("UMB"), which contains inequitable default provisions preventing Kearney Electric from enforcing its rights and remedies against third parties.

{00410935 2}

1           Kearney Electric, along with multiple other mechanic lienholders, were involved  
2 in litigation referred to as the “Ground Lease Litigation” in the Credit Agreement.  
3 Credit Agreement at 11. In that litigation, Kearney Electric has asserted claims against  
4 not only the Debtor, but also direct claims against Pacific Proving, LLC (“Pacific”), the  
5 land owner and lessor under the ground lease, and Legacy Sports USA, LLC (“Legacy  
6 Sports”), the Debtor’s former manager/operator, among others. Kearney Electric holds  
7 properly perfected mechanic liens securing approximately \$5MM owed for services  
8 rendered, which encumber the Debtors’ assets and the land. Importantly, the nondebtors  
9 and their assets are not protected by the automatic stay. *See* 11 U.S.C. § 362(a); *In re*  
10 *Advanced Ribbons & Office Prods., Inc.*, 125 B.R. 259, 263 (B.A.P. 9<sup>th</sup> Cir. 1991) (“The  
11 automatic stay...protects only the debtor, property of the debtor or property of the  
12 estate); *see also* Audio from May 4, 2023 hearing in Legacy Care’s bankruptcy case  
13 [Doc. 77], 1:17:13-1:18:21, (wherein the Debtor’s counsel states no stay is in effect as to  
14 nondebtor parties or property that is not property of the estate).

15           Pursuant to the Credit Agreement, among other things, an Event of Default  
16 includes:

17           Relief from Automatic Stay. The Bankruptcy Court shall enter an order  
18 granting relief from the automatic stay to any creditor or party in interest (i)  
19 to permit foreclosure (or the granting of a deed in lieu of foreclosure or the  
20 like) on any material assets of Debtor, or (ii) to permit other actions that  
[UMB] may, in its sole discretion, deem to have a Material Adverse  
Effect.”

21 Credit Agreement § 8.1(l). A “Material Adverse Effect” is defined as “any material  
22 adverse effect on or change in (i) the ability of Debtor to perform their obligations  
23 hereunder or under any of the DIP Loan Documents,” among other terms. Credit  
24 Agreement at 13.<sup>1</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> *See also* Motion at 7.

1 Effectively, the Credit Agreement creates a *de facto* stay of the Ground Lease  
2 Litigation. If Kearney Electric pursues its rights against nondebtor parties and their  
3 property in that litigation, an Event of Default under the Credit Agreement is triggered,  
4 and UMB is free to exercise all remedies under the Credit Agreement.

5 Likewise, if the Debtor fails to oppose any action that would impair UMB's rights  
6 and remedies under the Credit Agreement, such as a motion for relief from stay or the  
7 continuance of the Ground Lease Litigation, the Debtor is potentially in default under  
8 the Credit Agreement. *See* Credit Agreement, § 8.1(f) ("Challenges" section). This is  
9 despite the Debtor acknowledging no stay is in effect as to nondebtor parties. *See* Audio  
10 from May 4, 2023 hearing in Legacy Care's bankruptcy case [Doc. 77], 1:17:13-1:18:21.  
11 Put simply, if the Credit Agreement is approved in its current form, it not only grants  
12 UMB priming liens and superpriority status in a situation already dire for the remaining  
13 creditors, but it also handcuffs Kearney Electric and other similarly situated parties by  
14 forcing it/them to sit on their rights against nondebtor parties at the risk of causing a  
15 default under the Credit Agreement. Whether this result was intended or not, it is wholly  
16 inappropriate for the Credit Agreement and Motion to restrict creditor claims against  
17 nondebtors.

18 For these reasons, Kearney Electric does not oppose the Motion being granted on  
19 the condition that any Order approving the Motion specifically provides that no Event of  
20 Default under the Credit Agreement can occur in the event Kearney Electric exercises its  
21 state law rights and remedies against nondebtor parties.

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Respectfully submitted,

DATED: May 19, 2023.

**ALLEN, JONES & GILES, PLC**

/s/ PJG #30340

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**E-FILED** on May 19, 2023 with the U.S.  
Bankruptcy Court and copies served via ECF  
notice on all parties that have appeared in the case.  
**COPY** sent by e-mail on the same date to:

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