

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

GENESIS HEALTHCARE, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-80185 (SGJ)

(Jointly Administered)

Related Dkt. Nos. 577, 677, 925, 926 & 954

**NOTICE OF CHALLENGE PURSUANT TO THE FINAL ORDER
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION
FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (III)
MODIFYING THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

The Ad Hoc Group of Holders of Personal Injury and Wrongful Death Claims (the “Ad Hoc Group”),² by and through their undersigned counsel, hereby submits this Notice of Challenge (this “Notice”) pursuant to the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (Dkt. No. 677) (the “DIP Order”).³ The Ad Hoc Group and each of its members respectfully state as follows.

¹ The last four digits of Genesis Healthcare, Inc.’s federal tax identification number are 4755. There are 291 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. The location of Genesis Healthcare, Inc.’s corporate headquarters and the Debtors’ service address is 101 East State Street, Kennett Square, PA 19348.

² See Verified Statement of the Ad Hoc Group of Holders of Personal Injury and Wrongful Death Claims Pursuant to Bankruptcy Rule 2019(c) (Dkt. No. 884).

³ Capitalized terms used but not otherwise defined herein have the meanings given to them in the DIP Order.

1. **Paragraph 24(d) of the DIP Order** provides that the “Challenge Deadline” for “parties other than the Committee” is “September 24, 2025” and that the “Challenge Deadline” for the “Official Committee” is “October 13, 2025.” DIP Order at ¶ 24(d). The Ad Hoc Group is not the “Committee” or the “Official Committee,” as such terms are used in the DIP Order.

2. **Paragraph 24(a) of the DIP Order** provides that absent a Challenge, the “Stipulations and Releases” in Paragraph E of the DIP Order and the Interim DIP Order “shall be binding upon all **parties in interest** . . . unless the Official Committee or a **party in interest** (in each case, to the extent requisite standing is obtained pursuant to an order of this Court entered prior to the Challenge Deadline . . . with respect to the Stipulations and Releases, and a challenge has been filed with this Court[.]” DIP Order at ¶ 24(a) (emphasis added).

3. Each member of the Ad Hoc Group holds a “personal injury or wrongful death claim” against a Debtor within the meaning of 28 U.S.C. § 157(b)(2)(B) and, therefore, is a creditor and “party in interest” in these chapter 11 cases and has the right to “appear and be heard on any issue” in these cases. 11 U.S.C. § 1109(a).

4. **Paragraph E(xi) of the DIP Order** purports to release, on behalf of “each of the Debtors and the Debtors’ Estates,” the “Released Parties”—*i.e.*, “the DIP Agent, the Welltower DIP Lender, the Omega DIP Lender, the Welltower Master Lease Secured Parties, the Omega Master Lease Secured Parties, the Prepetition Term Loan Agent, the Prepetition WELL/OHI Term Loan Lenders, the Prepetition ABL Secured Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, or successors of each of the foregoing (all in their capacities as such)” and “the WAX DIP Lender and the WAX/MAO Investigation Parties (as defined in the DIP Term Sheet), solely as it relates to the DIP Facility, the DIP Obligations, and the DIP Loan Documents—from “any and all (a) obligations and liabilities to the

Debtors (and their successors and assigns), and (b) claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and **causes of action** arising prior to the date of [the] Final Order.” DIP Order at ¶ E(xi).

5. The Debtors have **not** identified, or made information available to all parties in interest in these cases sufficient to identify, all the persons that are “officers, directors, controlling persons, employees, agents, attorneys, affiliates, or successors” of the parties specified in Paragraph E(xi) of the DIP Order. Further, the Debtors have **not** identified, or made information available to all parties in interest in these cases sufficient to identify, the “causes of action” that the Debtors and the Debtors’ Estates may assert against the Released Parties that the Debtors and the Debtors’ Estates are purporting to release under the DIP Order.

6. By the *Debtors’ Objection to Motion of Certain Holders of Personal Injury and Wrongful Death Claims for Relief from the Automatic Stay to Pursue Claims Against Non-Debtor Defendants* (Dkt No. 925) (the “Debtors’ Lift Stay Objection”) filed on September 15, 2025, the Debtors have asserted that personal injury and wrongful death claims (based on injuries suffered by individual claimants and not the Debtors) that can be asserted by claimants (and not the Debtors) under applicable state law outside of bankruptcy against non-debtors under various legal doctrines (including alter ego and veil piercing) are “causes of action” that should be treated as property of the Debtors’ Estate inside of bankruptcy.

7. **The Challenge mechanics in the DIP Order are ambiguous.** Paragraph 24(a) of the DIP Order purports to define the terms “Challenge Proceeding” and “Challenge.” DIP Order at ¶ 24(a). Paragraph 24(a) of the DIP Order provides that absent a Challenge, the Stipulations and Releases “shall be binding upon all parties in interest . . . unless the Official Committee or a **party in interest** (in each case, to the extent requisite **standing** is obtained pursuant to an order of

this Court entered prior to the Challenge Deadline . . . with respect to the Stipulations and Releases, and a challenge has been filed with this Court . . . by the Challenge Deadline, asserting claims or **causes of action** released by the Stipulations and Releases or objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of any of the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Secured Documents, or **otherwise asserting** or prosecuting any Avoidance Action or any other claim, counterclaim, **cause of action**, objection, contest, defense or other challenge or claim . . . against any of the Subject Parties[.]” *Id.* (emphasis added). This sentence indicates that a party-in-interest must obtain “standing” from the Court and assert a Challenge “prior” to the Challenge Deadline.

8. However, the definition of “Challenge Deadline” in Paragraph 24(d) of the DIP Order provides that the Challenge Deadline is **tolled** upon the filing of a “**motion** . . . (including) a **written statement** describing the causes of action and operative facts upon which any such Challenge might be based.” DIP Order at ¶ 24(d) (emphasis added). But this definition conflates such a “motion” with a “standing motion” by providing that “the filing of a motion pursuant to subsection (D), *supra*, shall toll the Challenge Period only as to the party that timely filed such standing motion and only with respect to the claims included in the proposed complaint or the written statement of claims until such motion is resolved or adjudicated by this Court.” *Id.*

9. **Ownership Dispute.** There is a dispute over whether personal injury and wrongful death claims that the Ad Hoc Group members hold under applicable state law against various non-debtor parties, including parties that may fall within the definition of “Released Party,” are “causes of action” that are property of the Debtors’ Estates, as reflected in the *Motion of Certain Holders of Personal Injury and Wrongful Death Claims for Relief from the Automatic Stay to Pursue Claims against Non-Debtor Defendants* (Dkt. No. 577) (the “Lift Stay Motion”), the Debtors’ Lift

Stay Objection, the *Limited Objection of CPE 88988 LLC to the Motion of Certain Holders of Personal Injury and Wrongful Death Claims for Relief from the Automatic Stay to Pursue Claims Against Non-Debtor Defendants* (Dkt. No. 926), and the *Reply in Support of Motion of Certain Holders of Personal Injury and Wrongful Death Claims for Relief from the Automatic Stay to Pursue Claims Against Non-Debtor Defendants* (Dkt. No. 954) (the “Ownership Dispute”).

10. The Ad Hoc Group asserts that the Challenge mechanics set forth in the DIP Order do **not** apply to the Ownership Dispute. The Ad Hoc Group’s members’ personal injury and wrongful death claims, as assertable against non-debtors under state law doctrines like alter ego, veil piercing, and successor liability against non-debtor parties (including the Released Parties), are their own property and are not property of the Debtors’ estates. These personal injury and wrongful death claims cannot be released by the Debtors or the Debtors’ Estates and, therefore, cannot be viewed as impacted by the Stipulations and Releases. The Ad Hoc Group’s members’ do not need to obtain standing to assert their own claims against non-debtor parties under state law. Further, the Ad Hoc Group’s members should not be required to obtain standing from the Bankruptcy Court to assert their *own* claims as estate claims such that any proceeds thereof must be distributed to all unsecured creditors in accordance with the Code’s priority scheme.

11. However, if the Ownership Dispute is decided in the Debtors’ favor, the Debtors may take the position that Paragraph 24 of the DIP Order required the Ad Hoc Group to file a “written statement of claims” describing the “causes of action and operative facts upon which any such Challenge might be based” on or before September 24, 2025. The Lift Stay Motion, filed a month prior to the Challenge Deadline, satisfies the conditions of being a Challenge within such framework. The Lift Stay Motion is a motion brought by parties in interest with requisite standing

(under applicable state law) and the Lift Stay Motion asserts and describes causes of action that may be argued to be released by the Stipulations and Releases against the Released Parties.⁴

12. Out of an abundance of caution, and solely to the extent necessary to preserve the Ad Hoc Group's members' individual rights and prevent causes of action against the Released Parties involving injuries suffered by the Ad Hoc Group's members from being deemed released or impaired in any respect by the DIP Order, the Ad Hoc Group hereby files this Notice on behalf of each of its members to provide additional notice of Challenge to all case parties.

13. Through the Lift Stay Motion and this Notice, all case parties (including CPE 88988 LLC) are on notice that there is an ownership dispute over whether the Ad Hoc Group's members' personal injury and wrongful death claims, as assertable against non-debtors under state law doctrines like alter ego, veil piercing, and successor liability against non-debtor parties (including the Released Parties), are their own property, as well as the operative facts upon which such causes of action might be based.

⁴ Facts that may support the imposition of alter ego liability include, *inter alia*: the parent and subsidiary have common stock ownership, common directors or officers, the parent and subsidiary have common business departments, the parent and subsidiary file consolidated financial statements, the parent finances the subsidiary, the parent caused the incorporation of the subsidiary, the subsidiary operated with grossly inadequate capital, the parent pays salaries and other expenses of subsidiary, the subsidiary receives no business except that given by the parent, the parent uses the subsidiary's property as its own, the daily operations of the two corporations are not kept separate, and the subsidiary does not observe corporate formalities. *See U.S. v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 691-92 (5th Cir. 1985); *In re SMTC Mfg. of Texas*, 421 B.R. 251, 321 (Bankr. W.D. Tex. 2009). Facts that may support the imposition of successor liability include, *inter alia*: (1) when the successor expressly or impliedly agrees to assume the liabilities of the predecessor; (2) when the transaction may be considered a de facto merger; (3) when the successor may be considered a 'mere continuation' of the predecessor; or (4) when the transaction was fraudulent. *Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985); *Stearns Airport Equip. Co. v. FMC Corp.*, 977 F. Supp. 1263, 1269 (N.D. Tex. 1996).

Dated: September 24, 2025

**STUTZMAN, BROMBERG, ESSERMAN &
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*Counsel to Certain Holders of Personal
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic means via ECF transmission to all Pacer System participants in these bankruptcy cases on September 24, 2025.

/s/ Peter C. D'Apice

Peter C. D'Apice